

**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, September 23, 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	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
Carla Barrow (via telephone)	Weiss Serota, et al.
Tony Pires	District Counsel
Mr. Love	Resident
Jesse Fritz	Resident
Jack Perrin	Resident
Mr. Quill	Resident
Chuck Salvaggione	Resident
Ms. Smith	Resident
Mr. Blitcher	Resident
Ms. Klentz	Resident
Mr. Green	Resident
Ms. Courtemanche	Resident
Mrs. Robertson	Resident

**FIRST ORDER OF BUSINESS**

**Call to Order/Roll Call**

The meeting was called to order at 10:13 a.m. Mr. Adams announced that all Supervisors were present at Roll Call.

**SECOND ORDER OF BUSINESS****Update: Foreclosure Action**

Mr. Adams stated the first Order of Business is an update on the foreclosure action and indicated there is no news with regard to the Forbearance Agreement. He advised that Mr. Aponte has prepared an Amendment to the Master Trust Indenture for the various series that are subject to the foreclosure actions, which essentially allows for the establishment of a remedial account. They will utilize Debt Service Reserve funds to pay for all activities, pertaining to the foreclosure, out of those specific bond funds. He added, to the extent that those are insufficient to meet the obligations, then the obligation becomes a direct one of the bondholder; therefore, it keeps them at an arms-length transaction and has no negative effect on property owners who continue to pay their property taxes and thus, meet their obligation requirements under the Debt Service Fund.

Mr. Adams then asked for an opinion from Ms. Barrow. Ms. Barrow indicated they wished to state, for the record, with respect to their firm, the Retainer Agreement is, as they understand it, directly with the CDD and, thus, they look to payment from the CDD. She stated no problems are anticipated; they anticipate that the funds for payment will flow fairly, but as a reminder, they will be looking to the entity that signed the Retainer Agreement to comply with those obligations.

Mr. Schutt stated, basically, what you are saying is if the bondholders run out of money in the foreclosure action and don't pay it, Weiss Serota will look to the CDD for payment.

Mr. Barrow reiterated that they will need to get paid; they do not foresee any problems. She stated, for clarification, they will be looking to the party that signed the Retainer Agreement for ultimate payment.

Mr. Adams asked if there were any other questions or comments and indicated this is a standard form of agreement. Mr. Brougham confirmed that, when it is signed, this Agreement becomes effective on the date signed and an invoice has already been rendered for payment. Mr. Adams stated the District has accrued some invoices from Weiss Serota and those will be submitted, under this Agreement, for reimbursement. Mr. Brougham asked if that submission goes through the normal process and Mr. Adams advised it goes directly through the Trustee, as a part of this Agreement.

**On MOTION by Mr. Brougham and seconded by Mr. Schutt, with all in favor of approving the First Amendment to the Master Trust Indenture, Fourth Supplemental Indenture and Fifth Supplemental Indenture between Fiddler's Creek CDD #1, as the District, and U.S. Bank National Association, as Trustee, dated as of September 1, 2009 relating to FCCDD Special Assessment Revenue Bonds, Series 2002A and 2002B and Special Assessment Revenue Bonds, Series 2005.**

Mr. Schutt asked for an update on the foreclosure process. Ms. Barrow stated they now have a listing of the various units and the obligations that are due thereon. They also have started the process of engaging a title company to perform searches, which helps them find everyone with an interest in the property, so they can name them properly as a defendant. She indicated they anticipate that process taking approximately a week, more or less, so they will begin crafting the Complaint and adding the defendants and will be within the timeframe recognized at the last meeting, for filing.

Mr. Schutt stated, in the past, Ms. Barrow talked about defenses that might be raised against the foreclosure and asked her for an example of a typical defense.

Ms Barrow explained, sometimes the borrower may say they have paid; sometimes the borrower may say the wrong owner is listed; they may say there is a discrepancy with the number or they may have a defense as to an offset. She stated it is too early to say; they will file the Complaint and see. She added, in other cases, she has seen various defenses with respect to the banks that may relate to the timing of when a Complaint should be filed, but, once again, they are moving forward on the foreclosure and they will deal with those defenses as they arise.

Mr. Schutt asked if the defenses are raised as obstruction and delaying tactics or if they are frequently valid. Ms. Barrow responded, it's hard to say, but oftentimes, there will be what they call "paper defenses" and the way to handle those is through a process called Discovery, where you get documentation that will support or defeat the defense or you take a statement from a witness that will defeat the defenses. They would pursue those types of defenses aggressively, but they can't say, at this point, that any of that will occur.

Mr. Brougham indicated, to Ms. Barrow, that he knows they are in the process of exploring and determining clear title, or who all of the potential lienholders are and he asked her what her anticipated end is to that process and the actual filing of the Complaint. Ms. Barrow responded they would like to have those commitments within a week, approximately, and then,

in terms of confirming data and getting everything in forms, she hopes, within a week, thereafter they will be ready to go, so approximately a two (2)-week period of time.

Mr. Brougham asked if there were any questions. Mr. Love, a resident, asked if any of the properties that are being foreclosed on have any structures on them, or if they are all open land. Mr. Adams responded they are open land. Mr. Brougham indicated it is his understanding that there is nothing vertical on any of them. Mr. Love then asked if the open land is physical area or if there is open land within established villages. Mr. Adams responded there may be some platted lots within established villages, but the vast majority of it is going to be open, undeveloped property. Mr. Love indicated he lives on Mulberry and right across the street, there are two (2) lots. Mr. Adams stated he believes, on Mulberry, everyone is on-roll, but in some of the neighborhoods that have recently started development, there may be portions of a neighborhood that may still be off-roll that would be subject to this.

Ms. Barrow asked if she could excuse herself at this time. Mr. Brougham asked if there has been any movement at all, that she is aware of, between the developer and the bondholders and/or the outside investors, towards reaching some settlement on this matter. Ms. Barrow advised there have not been any communications in their office regarding that. She indicated that bondholders' counsel may be on the line and may have something else to share. Mr. Aponte was not on the phone and Mr. Brougham indicated that they have to assume status quo.

***\*\*\*Ms. Barrow left the meeting.\*\*\****

**THIRD ORDER OF BUSINESS****Staff Report: Engineer**

Mr. Cole stated they have one (1) pay draw to review, that they processed during the last month, which is Pay Draw #38, for the Series 2005 Bond, for approximately \$46,000. He indicated there are a variety of items, some of which are retainages that they have been trying to get paid; some of the old invoices that have not come through yet. He noted one (1) of the larger items was related to the Belle Meade Grade clearing, which has been ongoing. It is for approximately \$28,000. Mr. Brougham asked, with regard to retainages and the submission of invoices, if these were invoices rendered to the District by subcontractors. Mr. Cole responded they are rendered to the developer. He added, for example, on Page 2, under "Landscaping", for the main entrance fountains, \$5,750 is the retainage due for the main invoice that was already

paid a few months ago. He explained that retainages are held on District-related items. Discussion ensued with regard to retainage being subject to a statute of limitations.

Mr. Brougham noted this is not the first time the subject of retainages, that are not being settled, has come up. Mr. Cole stated some of these retainages are ongoing and regular and some of them are older. He said they are trying to clean up all of the old invoices, especially in light of the foreclosure. Mr. Brougham stated there are some that you have not been invoiced for, but you know you have some retainage. Mr. Cole agreed.

Mr. Cole stated he had also handed out an update of the Probable Costs to Complete Work in Progress and indicated this was first presented in April. He advised they have been trying to get the contractors to get all of their invoices in. He explained there are some old retainage items and he has spent quite a bit of time, in the last few weeks, reviewing these with the developer and the contractors. He said this list reflects an update. He referred to Item 6 – Retainages/Previously Unpaid Invoices and indicated the \$100,000 is the result of his efforts over the last couple of weeks. He explained that these items have been updated to reflect where they are today, versus where they were a few months ago, and some work has been done and some of these items have been reduced from the previous estimates he had given. As an example, he referred to Item #4, the Belle Meade Grade clearing, and pointed out this item has been significantly reduced from prior reports.

In answer to a question by Mr. Brougham, Mr. Cole confirmed that the first six (6) items are items that are in progress; they are not being held up by the bondholders. Mr. Cole added that he sent this list to Mr. Aponte and to Mr. Adams on Monday and their direction, thus far, has been to continue with what they are proceeding with. He stated, Item #1, which is the installation of the sidewalk connections, is the only item that they haven't started. He noted they have the design done and the permits.

Mr. Brougham stated, for the benefit of the Board and participation and comment, they have discussed the sidewalk connections on Championship for over a year; making the cuts, making the ramps, making the sidewalks and basically making the crosswalks as exit to each village. He noted they have the permits; they are poised to go. He indicated the last item of discussion was the signs, the decorative posts versus the regular posts, and the fact that it would cost \$18,000. Mr. Cole noted they are approximately \$1,100 each. As an update, he stated the sign is a dark bronze in color and it has a base. He explained the base costs a few hundred

dollars alone, so if they get rid of the base, they will save almost 40% and his recommendation is not to put the base in. He indicated the rest of the sign will look the same as what is in the rest of the community and they have also been able to reduce the number of signs by two (2) or three (3).

Mr. Brougham explained he had a discussion with Mr. Cole over the last couple of weeks and he had requested that he not go forward with starting the actual construction on these until the Board had an opportunity to see a layout and to get the developer to buy in on the signs. He stated if they recall, their discussion was that it might look like "signpost city". He requested that Mr. Cole give them the benefit of an aerial view of Championship, superimposed with where the crosswalks and the signage will be, for consideration. He further stated this is \$65,000; bond funds are available, if approved by the bondholders to go forward, but they may want to hold this project in abeyance, pending further comments he has to make at the end of this meeting. They may wish to consider utilizing that capital cost for other capital improvements on Championship, other than the crosswalks, and he will speak to that.

Mr. Schutt stated they are spending \$65,000 of capital costs, but as a result of doing that, they will have to spend quite a bit of operations and maintenance monies with it, which is the signage and the crosswalks. Mr. Cole stated that is all part of the capital cost. Mr. Schutt asked what level of signage the \$65,000 includes. Mr. Cole responded, the ultimate level. Mr. Slater asked how long the permit stays in effect. Mr. Cole responded, with this particular permit, he would say generally, two (2) years, so they have lots of time.

Mr. Brougham stated his point is, this is capital money that they all intend to go to a good purpose and they may decide to go forward with this, subject to approval by the bondholders; however, there may be other areas to invest this \$65,000 to mitigate some traffic issues that they have on Championship.

Mr. Cole stated, if you look toward the bottom, the grand total is approximately \$700,000 worth of work and the approximate bond balance has been updated to reflect the amount through the draw he just presented, which is Draw #38, so the amount of excess funds that can be released back to the bondholders will be approximately \$6.6 million. Mr. Brougham asked if Mr. Adams knows when they will be getting a reading back from the bondholders on these projects. Mr. Adams responded he expects feedback within the next week or two (2).

A Board Member stated they had also requested the Developer, through Mr. Albeit, to tell them how he feels about the signage and he asked Mr. Cole what happened with that.

Mr. Cole indicated he has not heard anything. Mr. Brougham stated he heard from Mr. Albeit, by way of an e-mail, and indicated he has not had an opportunity, nor has Mr. Cole, to discuss with Mr. Albeit, from a DRC perspective, whether they would go along with the decorative post without the decorative base and he asked Mr. Cole to do that. He then asked for a consensus of the Board to suspend the action on that project.

Mr. Schutt stated looking at Mr. Cole's summary, there are estimated excess funds available in the Bond Fund of \$6 million and he hoped they would not go through that in the next six (6) months. He added, so that everyone understands, this has nothing to do with their assessment on their taxes; they are discussing the Construction Fund, the bondholders and the whole issue of default on the bonds. He indicated there is considerable money left in the Bond Fund, but essentially the bondholders and the trustee for the bondholders will now advise whether or not they want them to spend that money and whether or not they want those funds depleted because basically, it is their money, at this stage of the game. He advised, it does not appear that they will ever run out of money for Attorney fees, with all of the balances that are left in the Bond Funds, so the question becomes one of getting the bondholders' approval to spend money and, in this case, for the signage and the signs, \$18,000 worth of posts as opposed to \$3,000 worth, but it is bondholder money. He added delaying it may or may not preclude it being done in the future because there may not be any bond money because, theoretically, the bondholders could take it all back and shortcut their losses.

A Board Member stated the bondholders might also act in their best interest and say if they spend the money, which is their money, it will improve or maintain the value of their property.

Jesse Fritz, a resident, asked who incurs the cost of this money, whether it is spent or not.

Mr. Brougham explained the money resides in trustee accounts and it is from the proceeds of the sale of the tax exempt bonds. It is on deposit with the trustee and it is there specifically to fund construction activities.

Mr. Fritz asked where the money goes if it is spent and where it goes if it is not spent.

Mr. Brougham stated, if it is spent, it is spent on construction activities that are approved by way of the Engineer's Report for the development; approved construction projects under capital infrastructure. It is paid out to reimburse the contractors for that construction.

Mr. Fritz stated the bondholders get more return if it is spent than if it is not spent.

Mr. Adams stated that is actually part of this analysis that Mr. Cole was presenting. He explained that there are certain infrastructure programs that are in process and there is a lot more value to those infrastructure programs once they are completed and being able to serve the adjacent property increases that value, so what Mr. Cole has done is to identify the costs to complete those programs; the remaining \$6.6 million is for future phases and, at this point, maybe not something that the bondholders want consider. Mr. Brougham stated in the interim, the bondholders are gaining interest on their money.

A Board Member stated there are a lot of on-going engineering projects, some of which have not been completed, and that is what they are discussing; how much should they spend to finish these projects off, because that is of interest primarily to the bondholders. Mr. Brougham stated they are doing nothing without consent of the bondholders.

**FOURTH ORDER OF BUSINESS****Update: Settlement Offer to OneSource Landscape & Golf Services, Inc.**

Mr. Brougham stated, for the benefit of the residents attending the meeting, as a Community Development District, they employed OneSource Landscape & Golf Services, Inc., to do the landscape maintenance, along the District roadways, for a one (1)-plus year contract, which the District terminated on November 30<sup>th</sup>, under the terms of their contract. He advised this was because of their repeated non-compliance with the terms of the contract. They were not doing a good job. He explained that when the District terminated them, monies were held back until the new contractor could come in, perform a thorough inspection, find out exactly what work that should have been done was not done, and they went through a very exhaustive analysis. The District subsequently paid around \$19,000, to OneSource, as payment for their final month of work. That resulted in an ongoing dispute between OneSource and District Management Staff regarding the work the District claimed was not done and OneSource claimed had been done. OneSource filed suit against the District 30 to 45 days ago. The District responded with an offer of settlement about two (2) weeks ago and OneSource was claiming in



excess of \$59,000. The District offered them a settlement of \$10,000, inclusive of Attorney's fees.

Mr. Pires reported, in the letter that he was authorized to send, he stated that they needed to have a response back by September 17<sup>th</sup> as to whether or not OneSource would accept the offer because, at that time, the time frame for the District to respond to the lawsuit was September 18, 2009. On September 17<sup>th</sup>, he received a response back from OneSource, saying that they rejected the \$10,000, in essence, and they countered, saying they were willing to settle for \$37,341.34, and that was their final offer. The amount of \$37,341.34 is the same amount they offered to the District Management to resolve this issue back on April 6, 2009 and the District Management felt that was not an appropriate number to resolve this dispute and he concurred with that, as did the Board.

Mr. Pires indicated the time to respond was extended until today, September 23<sup>rd</sup>. Not knowing what the Board's action may be, he prepared the necessary responses to the lawsuit and motions to dismiss two (2) of the counts entered. It is ready to be signed and hand delivered. He indicated he and Mr. Adams had some brief discussions with regard to whether or not they would recommend to the Board to accept, or even respond to the correspondence from OneSource. If the Board was inclined to try to resolve this before it goes into litigation, they could make another counter-offer; after the District files its response, they could still make offers. He added that, in every litigation of this type, the courts always require mediation before getting to trial, so at some point, they need to try to mediate it anyway. He explained that it is a non-binding mediation, whereby, if the parties agree, they do; if they don't, they don't. They have to try to resolve this, in good faith. If the Board is inclined for them to try, in spite of their efforts to make this a statement of their final offer, they are willing to entertain some discussion by the Board. If not, he is ready to file the District's responses today.

A Board Member asked if they are incurring any additional costs by going back and forth. Mr. Pires stated the cost for him to prepare the necessary response, in case they got caught at the last minute, has been incurred. From the standpoint of additional costs for discovery, depositions, etc., he has not drafted any discovery documents, nor have any depositions been scheduled. He stated to date, it has been a relatively minimal expenditure; probably 15 -20 hours to do the research to prepare the response. Mr. Brougham stated you are being paid your normal contractual fee for the legal work. Mr. Pires stated, at a higher rate; that is correct. Mr.

Brougham stated he would like to entertain comments or opinions. Mr. Pires stated he does not want to have a discussion on the strengths and weaknesses of their position. He advised those are the kinds of discussions they can only have in a Closed Door Session. Mr. Brougham stated he thinks they need to give him some direction today. Mr. Pires stated that, once again, he is ready to file the answer today. Mr. Schutt stated they should just file their answer. He added Mr. Pires has indicated he has prepared a response and they still have the opportunity to negotiate after that fact, so he feels they should file the response and decide where to go from there. He added that Mr. Pires has prepared a response relative to dismiss points one (1) and two (2).

Mr. Pires stated there were three (3) counts to the lawsuit. He drafted a Motion to dismiss two (2) of those counts, saying they failed to state a cause of action. He advised, as to the Breach of Contract claim, he prepared an answer, affirmative defenses, which are defenses we assert to defeat their claim and then a counter-claim for Breach of Contract that they engaged in. He stated that will be our response as to the Breach of Contract.

Mr. Schutt stated they arrived at this after reviewing the contract and feeling that they had a case. He indicated he does not think the Board has changed its mind; they still have a case; therefore, they should pursue it. A Board Member stated six (6) months ago, our District Manager told us, at this exact same money value, that this was invalid, so why should we change our opinion now; it is still invalid today. Mr. Slater agreed. He advised they had stated their position before and nothing has changed. Mr. Brougham concurred. He stated they made their final offer and he can hear the Board saying they are not going to counter.

Mr. Pires stated he will file the District's response.

**FIFTH ORDER OF BUSINESS**

**Approval of Minutes**

- **August 26, 2009 Public Hearing and Regular Meeting**

Mr. Brougham stated the next item is approval of the minutes. He noted Mr. Fulker's first name has one (1) "n" and he is not a resident; he is with Cardinal Management. He then indicated on Page 3, on Line 95, the third word in should be spelled differently; it is pallet in terms of a pallet of landscaping.

Mr. Robertson advised on Page 5, Mr. Brougham made a statement to the Developer, during this portion of the discussion, that basically stated if construction was reestablished, he

would be willing to accommodate a guard at the Sandpiper Gate. Mr. Brougham stated he did, as well, and he got a verbal commitment, at that time, from Mr. Albeit. He explained that somewhere between Lines 142 and 145, there was a condition placed at that time, in that context, upon the closing of Sandpiper that if, in the future, construction traffic increased to any significant extent, the developer would, at his cost, fund the presence of a gate guard to facilitate entry by construction traffic.

Mr. Pires stated at the end of Line 159 and the beginning of Line 160, he believes it would be more accurate to say, "Mr. Pires stated it would be appropriate to ask for the consent of the developer". He added further on, in Line 164, it is important to state that "on behalf of the developer, Mr. Albeit stated the developer consented".

Mr. Brougham asked if there were any changes on Page 7. Mr. Pires stated, on Line 218, where it says "he advised the Board to advertise", with regard to his request, it is more accurate to say, "He stated that he desires the advice of the Board as to the pending litigation and requested a Closed Door Session, and to establish and advertise..." There being no further changes, Mr. Brougham asked for a motion to approve the minutes.

**On MOTION by Mr. Curland and seconded by Mr. Brougham, with all in favor of approving the August 23, 2009 Public Hearing and Regular Meeting Minutes, as amended.**

- **September 9, 2009 Continued Meeting**

Mr. Brougham stated on Page 1, add parenthetically "via telephone" with Mr. Aponte and Ms. Barrow. Mr. Pires stated, for consistency, Ms. Barrow should be identified the same way she was identified for District #2. She was identified as being with Weiss, Serota. Mr. Brougham stated on Page 4, Line 133, he would delete the word "on", which is the fifth word in from the left. There being no further corrections, Mr. Brougham asked for a motion to approve the minutes, as amended.

**On MOTION by Mr. Slater and seconded by Mr. Curland, with all in favor of approving the September 9, 2009 Continued Meeting Minutes, as amended.**

- **September 9, 2009 Special Meeting**

Mr. Brougham reviewed the minutes, page by page. There being no changes, he asked for a motion to approve.

**On MOTION by Mr. Schutt and seconded by Mr. Brougham, with all in favor of approving the September 9, 2009 Special Meeting Minutes, as presented.**

## **SIXTH ORDER OF BUSINESS**

### **Other Business**

Mr. Brougham indicated he has something he wishes to read into the record and have a discussion with the Board about, which will be open to questions. He stated this is regarding the Championship Gate and the Interlocal Agreement between CDD #1 and CDD #2: "Many of you here, and some not present, have expressed your opinion about the current decision to leave Championship Gate manned with a guard and continue to direct all commercial guest traffic through that gate. Every resident here today that wishes to voice their opinion on the matter will certainly be allowed to do so, within a reasonable time limit." He explained by "reasonable", they want to give everybody that wants to speak on this and to voice an opinion, an opportunity to do so, and with that in mind, the Board may not entertain gracefully people going ten (10) minutes, fifteen minutes, twenty minutes, etc. He continued, "Please understand that currently, any decision with respect to gate operations must have the concurrence of both CDD #1 and CDD #2, as specified in the Interlocal Agreement between both Districts. This Agreement currently specifies the cost sharing of expenses, with CDD #1 paying 69% and CDD #2 paying 31% of the security and irrigation expense. It is my belief that this Agreement needs to be re-examined, with the objective of providing a more equitable voice to the residents of CDD #1, which currently only have a 50% vote. Since we both must concur, that means CDD #1 gets to vote 50% and CDD #2 gets to vote 50%, where we still have 69% of the population in CDD #1. During the four (4) months of considering our Fiscal Year 2010 Budget, the question of whether to man Championship, Sandpiper, or both, and as a result, where to direct commercial traffic, was discussed numerous times and voted on formally twice. The last consensus of the Board was to unman Sandpiper and save approximately \$80,000. This question is not on our published Agenda for today's meeting and was not advertised to the entire population of Fiddler's Creek to be reconsidered. For this reason, I would prefer not to entertain any motions by the Board on

this topic today; however, I would request approval of the Board to direct District Staff to place 'A Final Decision on 2010 Gate Operation' on our October Agenda for a full hearing. To aid in this discussion, our security contractors should provide to the District Staff a complete analysis of the traffic entering through all three (3) gates. That would include the main gate, Championship gate and Sandpiper gate. We have tended to be myopic here, over the last three (3) or four (4) months; we have focused on Sandpiper and Championship." He indicated, there is a third gate out there, configured probably better than any of the other gates, that he thinks they also need to consider and throw into the mix.

Mr. Brougham indicated, for the last calendar year, he wants that analysis, with the emphasis on the type of entry being obtained, whether that comes in through a bar code, whether it comes in through a gate clicker, whether it is Staff, whether it's guests; that type of a breakdown is going to be helpful to really get down to the facts of what they are talking about in terms of backups and in terms of volumes coming through all three (3) gates.

He continued reading: "Finally, I request approval of the Board to direct District Staff to prepare a full and complete Executive Summary of the issue of entrance gate operation and options, including funding, the legal options of CDD #1 under our Interlocal Agreement, and Capital Investment options for gate modifications, under our existing County permits, for each gate."

Mr. Brougham stated, the implication is there are certain capital improvements to the Championship gate they may want to entertain and should certainly be discussed next month, as far as perhaps putting a 'member' or 'resident only' lane around the current gatehouse, which would be clicker only, and then merge back into those two (2) lanes. He thinks they need to see what that would cost and they need to discuss whether or not that would be a viable option or compromise. "Included in the Executive Summary should be options available to cancel or modify the Interlocal Agreement to provide more equitable control to CDD #1 over the operations and funding of entrance gate operations, based upon the population of each District, excluding Developer-owned units, or ERU's, where people are not living." He expressed his concern about people that actually reside there; not whether they have a piece of an acre or a piece of a lot, that are in the equation but there are no people involved. He added that sways not only the funding, but also the wear and tear on the individuals there. He stated they are letting vacant land vote and that is not appropriate in this Interlocal Agreement. "The Executive

Summary should be prepared and distributed within the Agenda packet for the October meeting, which would then be available to all of the residents on the website.” It could be read by the residents, who could then form an opinion, based on fact, not emotion. They could bring those opinions to the meeting and they can have an advertised hearing to make a final decision.

Mr. Brougham indicated he received and retained emails that were specifically requested to be read into the record. He advised will read one (1) letter that he believes is very appropriate and then he will, by name, request that District Staff include the letters, as presented, in the minutes, for the next meeting. He then asked for opinions from the Board.

Mr. Curland stated, at the July meeting, there was a motion presented that basically stated that this Board would endorse the unmanning of Championship Drive; that motion was seconded and voted upon. He noted, last month, in discussion among this Board, there was a conversation about revoking this issue; there was never a motion made, never a second and never a formal vote taken. He indicated if you are going to reverse an agreed-to motion within the Board, it has to be formalized within the manner in which we operate this Board and it was not. He expressed his surprise that their Attorney did not ask them to formalize it. He stated if you look at the minutes just approved, there is no motion, no second and no vote. Mr. Brougham agreed. Mr. Curland stated the motion that was properly presented in July, seconded in July and voted upon stands as this Board's position at this time. Mr. Brougham asked Mr. Pires for his opinion.

Mr. Pires stated the Board has the ability to rescind a prior motion. His opinion is it is appropriate not to have an action taken today because of the nature of the issue. Mr. Brougham stated that was not the question. Mr. Pires stated the Board can rescind prior action.

Mr. Curland stated he agrees, wholeheartedly. He believes that the process in which the Board rescinded the decision made in July was not properly handled. Mr. Brougham stated there was no motion, no second and no vote; there was a consensus taken and that is the basis of Mr. Curland's question.

Mr. Adams stated the consensus was in the dialogue around the budget and the write-up in the budget, talking about the way in which they would operate those gates and the adoption of that budget document, with that understanding of how they would operate the gates. He stated they did not specifically pull the item out and take a vote on it, but it was held during the context of the budget document, the write-up that was in that budget document and his desire to make

sure that document was correct and accurate, prior to his asking the Board to adopt it, and that is where the discussion was held and the consensus requested.

Mr. Slater stated he was the deciding vote or opinion on that. He said he could not hear anyone in the audience; he was on the phone. He indicated that he lost contact for approximately 20 minutes and he did not know exactly what context he was "voting on". He wants this brought up as a brand new item on next month's Agenda because there are extenuating circumstances.

Mr. Adams indicated he does not disagree; he wanted to clarify the comment that it was not properly brought up.

Mr. Brougham stated he agrees with Mr. Curland's point, there was no formal motion made or seconded. It was a consensus and it was in a discussion of how they were going to go forward with the budget, if they are going to have a savings and, if so, where. He stated that is past history and the official record is, according to the motions in July that were voted on, that they are going to unman Championship. He indicated he would personally say that is the official, "on the record" decision because they did not have a motion in the last meeting. He advised they are at an impasse between CDD #1 and CDD #2 because it has been interpreted that they have to both agree on changes in services. He stated the Interlocal Agreement does not speak to change in service; the Interlocal Agreement speaks to change in costs. In the past, it was interpreted that any time they wanted to change anything, with respect to cost or services, they both must agree; that is why he believes they need to have a full hearing on the Interlocal Agreement, as well, because, in his judgment, they cannot continue to have two (2) separate Boards that have interests, financially and otherwise, that are unable to agree.

Mr. Brougham explained there are two (2) gates within CDD #1 that their bond funds constructed; they were not constructed by CDD #2 and their bond funds did not pay for them; the gates reside within the boundaries of CDD #1; thus, the Interlocal Agreement should give CDD #1 more rights and say as to what happens with those gates.

Mr. Schutt expressed his concerns relative to Mr. Brougham's proposal. He explained that, regardless of what studies they do, they know the traffic is currently being routed down Championship Drive and it is probably the worst road in the development for that. The people along Championship Drive see all of the commercial traffic for the whole development. He suggested bringing everything for Whisper Trace, Bent Creek, Mallard's Landing, Pepper Tree, Bellagio, Majorca, Plaza del Sol and the Club and Spa in through the front gate and bringing

everything for the back end in through Sandpiper, in order to be fair. He noted he did the drive this morning and it is three (3) minutes from Fiddler's Creek Parkway to Sandpiper and it is two (2) minutes from Fiddler's Creek Parkway to Championship Drive, so it is not a major imposition.

Mr. Schutt further stated the compelling argument is the people along Championship Drive were promised that that gate was going to be a resident only gate. He said unfortunately, these minutes are not verbatim minutes and they get condensed and things are not articulated. As an example, he indicated he thought they had a vote in July and one (1) in August and now finds out it wasn't really a vote; it was a consensus, but regardless, it does not show up specifically in the minutes. He stated, early in his tenure on the Board, they had a vote to get a Court Reporter and it was voted down. He feels one (1) is needed and indicated that is another issue that needs to be brought up.

Mr. Schutt stated the residents along Championship Drive were told it would be "resident only" and that promise needs to be kept and if they can't keep it, the residents need to be given some relief; there is no reason why that road should take all of that traffic. It can be brought in through the front gate or the back gate.

Relative to the Interlocal Agreement, Mr. Schutt advised it does not say they have to agree with CDD #2. As far as he is concerned, CDD #2 does not run this development; they have 39% of the vote and CDD #1 has 61%. The Interlocal Agreement says they have to agree on cost increases and they have to agree on allocation; they are not making any cost increases, nor are they changing the allocation from the 39/61%, so the Agreement does not apply. His last point was they have been discussing this for four (4) or five (5) years, so the Board either has to give the residents some relief or they all should resign.

A Board Member asked if they are going to unman Championship as of the first of October. Mr. Brougham suggested that they go to the end of October, status quo. He suggested they make no changes on staffing of the guards at either Championship or Sandpiper until a decision is reached at the October meeting.



**On MOTION by Mr. Brougham and seconded by Mr. Slater, with all, except Mr. Schutt, in favor of directing District Staff to prepare an Executive Summary, with full input from the District Engineer, the District Attorney and their Contractor, to provide funding options, operational options, Capital Improvement options, gate traffic analysis, as well as a separate item from District Counsel on the Interlocal Agreement as to how that can be modified to provide more equitable powers as to gate operations to CDD #1, and that they maintain status quo on gate manning, until such time as the issue is resolved. (Motion passes 4-1).**

A Board Member asked what CDD #2's vote was when they originally met. Mr. Robertson stated the vote was 4-1 to unman Sandpiper gate and man the Championship gate. Mr. Brougham confirmed their vote is 4-1, with Mr. Schutt in opposition.

**SEVENTH ORDER OF BUSINESS**

**Audience  
Requests**

**Comments/Supervisors'**

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

Mr. Love stated, somehow they interpret 27,000 entries on Championship as being either guests or service people. He indicated he saw the number 5,500 annually that are designated as commercial traffic. Mr. Brougham stated, that area of guest entry needs further dissection because there are guest passes registered and guest passes unregistered and he is not sure how that is defined by Mr. Charbonneau. He added they should try to determine how they can segregate out pure commercial traffic versus house guests. Mr. Adams stated that boils down to the actual definition of commercial that was discussed in the past; daily and weekly service people versus construction, moving vans and things of that nature.

Mr. Love stated if you look at those numbers now, through Championship, for the last year, which is 5,500, that breaks down to five (5) days a week, 17 vehicles a day; UPS alone would be four (4) of them. Mr. Adams stated UPS is not classified as commercial; they are pass throughs. Mr. Brougham stated he agrees 100%; they need a classification for these people because over the last two (2) weeks, he has heard that school buses are direct passers, any government vehicle gets a pass, UPS gets a pass, garbage trucks get a pass; they go through and come out wherever they want and, to a large extent, in the minds of the residents, that is the noise

they are hearing and the traffic they are seeing along Championship. They are outside of the statistics, but there needs to be some clarity on this. Mr. Adams stated, rather than draw out this discussion now, he knows where they want to go and it will be included in the Executive Summary.

Mr. Brougham indicated he will read one (1) letter, cite the ones he wants put in the record and then open up the meeting to Audience Comments on the gate.

Mr. Schutt stated the whole thing is relative to the construction of the study. The basic problem is that whatever they do, all of the traffic is going down Championship. If there was nothing bigger than a pick-up truck coming through there, that would be fine because they wouldn't hear anything else, but they are getting everything. He reiterated they need to categorize all of the trucks coming through there and they may need some of the residents to define them. Mr. Adams stated they are looking for statistics from Mr. Charbonneau, to the extent that he has it broken down by those very detailed categories. Mr. Brougham stated he is not asking personally for Mr. Charbonneau's opinion or the developer's opinion. Mr. Robertson stated for clarification, Mr. Adams mentioned the definition of commercial on the Post Orders. He stated the Board is asking for a breakdown by the actual type of vehicle that is accessing the gate.

Mr. Brougham stated he is going to call a point of order, he will read the letters into the record and then open the meeting to Audience Comments. He indicated he agrees with Mr. Fritz and suggested that Mr. Adams get a list from Mr. Charbonneau of the classifications of vehicles that they can capture with the gate entry software, as well as those vehicles that get a "wave through" that cannot be restricted and send that list to each Supervisor ASAP. That can be circulated individually for more input, if necessary, from the residents. Mr. Adams stated the goal is to have this by the end of October and he asked how much time to allow for each of them to circulate to residents and get more input before he begins crafting the Summary. Mr. Brougham advised him to get the breakdown, give it to the Supervisors and begin drafting the summary.

Mr. Brougham reported he received quite a few emails, but he has about seven (7) of them that specifically want to go on record. He stated he selected an email from Tony and Christine Coe that he thinks typifies the letters. He added he has not received any letters that

indicate they want the commercial traffic to come through Championship gate; every email, every phone call is against that, so he is not being selective.

Mr. Brougham read the following from Mr. and Mrs. Coe: *"Christine and I will not be back at Fiddler's Creek till next month, so we are unable to attend tomorrow's meeting in person. We would be grateful if this letter could be read aloud at the meeting and its contents taken into account in reaching a decision on this issue. We would like to add our voices to those residents who are calling for Championship to be made a residents-only gate. Christine and I have lived on Championship for about 7 years and have been adversely affected by the volume of commercial traffic along this 2-lane road which is set so close to many of the homes that it primarily services. As frequent cyclists, we know only too well the dangers attached to cycling along Championship, which often involves a succession of speeding commercial vehicles passing within a whisker of our handlebars! We are also conscious of the dangers for the many children who cycle and play in the vicinity of fast moving traffic along this road. Clearly Sandpiper is a much more suitable road for the safe accommodation of this type of traffic flow. Not only is Sandpiper a broad, 4-lane road, it is also set well away from the homes it primarily serves. Further, obviously Championship is the gate that we use for accessing the community and it is hugely inconvenient to have to wait behind commercial vehicles while the security guard processes them, because there is only one lane. (Were it not for the commercial traffic, Championship gate need not be manned. Indeed, in those circumstances, it would operate more efficiently were it not manned.) Conversely, Sandpiper gate can easily accommodate 2 lanes coming into (and out of) the community and is much better placed to enable the security guard to process commercial traffic, without delaying the ordinary ingress and egress of residents. It has all long been our understanding that the intention was for Championship gate to be designated for residents only once Sandpiper gate opened. For all the reasons set out above we respectfully submit that it would be very much in the best interests of residents for the CDD Boards to give effect to that wise intention without further delay. We appreciate this opportunity to make these representations to you and thank you for all the good work you do on behalf of the residents. Yours truly,"*

Mr. Brougham indicated he would like this in the record, along with an email that was forwarded from Kathleen Smith with reference to Dale and Dieter Zumsande, an email from Pat and Jack Schiavo, Ellen Courtemanche, Dr. Lawrence Winter and Bob and Dot Allcorn.

From Dale and Dieter Zumsande: *“Mr. Slater and Mr. Schutt, Could you please read this aloud at the Wednesday CDD meeting: We are writing as Pepper Tree homeowners in support of making the Championship Gate entrance, a residents only gate. When we purchased our property back in 2002, we were told that this gate would eventually become a residents only gate and the vendors would be using another entrance to Fiddler’s Creek. The vendors that are now coming through the Championship gate cause back-ups for long periods of time, noise and disruption to residents and are a general nuisance to the homeowners, especially during the winter. We are in favor of making Championship gate an unmanned gate. If this were to be the case, then there would be no extra expense incurred in re-routing the vendor traffic to the newer gate, which is in a less densely populated area. The newer gate could be manned, vendor traffic could come and go from there and the residents closest to Championship Gate would be happy to have “their gate” back, with less traffic tie-ups and disruptions. Again – we are only supporting what was already promised to the Fiddler’s Creek homeowners. Thank you for your time and energy in this matter.”*

From Pat Schiavo to Mr. Brougham: *“Phil, I am respectfully requesting that this email be read into the minutes at the 9/23/09 CDD1 meeting. Likewise, I am requesting that the answers be read into the minutes. 1. Why wasn’t the 7/22/09 CDD1 vote to unman the Championship Drive gate binding? 2. If CDD1 pays 69% of the security costs and CDD2 pays only 31% of the security costs, why does CDD2 have the controlling vote? 3. Has a cost/benefit analysis been conducted by CDD1 to determine whether it is beneficial to the CDD1 residents to have an “Interlocal Agreement” with CDD2? 3. Has a cost/benefit analysis been conducted by CDD1 to determine whether it is beneficial to the CDD1 residents to unman the Championship Drive Gate? 4. What were the costs of the technology installed at the Championship gate that were incurred with the specific purpose of unmanning Championship? Are there any ongoing costs? Is this technology being used? 5. Did CDD2 and/or the Developer pay any share of the recent costs incurred to repair the Championship drive potholes? 6. Does the Interlocal Agreement provide that CDD2 will pay a share of any future repairs and maintenance costs that will result from the increased traffic from CDD2’s vendors, landscapers, furniture delivery trucks and service personnel who will be required to use Championship? 7. Does the Interlocal Agreement provide that CDD2 share in costs when another bond will be needed to pay the costs to replace Championship Drive when it reaches an earlier obsolescence resulting from the*

*increased traffic from CDD2 vendors, landscapers, furniture delivery trucks and service personnel? 8. Is it cost beneficial for CDD2 to pay approximately \$180,000 of security costs when the residents of CDD1 must pay all repair and future replacement costs related to the early wear and tear of Championship Drive? Notwithstanding the dollar costs, there is a far greater and more important human cost to the residents of CDD1 who reside within the villages located on Championship Drive. The safety and welfare of the residents is jeopardized by the ever increasing traffic being directed onto Championship. Many residents within Fiddler's Creek have expressed their desire to have the Championship Drive be declared a residents' only gate in letters to be read during the 9/23/09 meeting. I would greatly appreciate it if you would request that the CDD2 Supervisors remain during the CDD1 meeting so that they can understand the human toll on the CDD1 residents that has occurred for too long as the result of all commercial traffic being directed onto Championship Drive. It is far more logical and with little if any inconvenience to have the landscapers, delivery trucks, construction traffic, vendors and service personnel enter through the Sandpiper Gate. I respectfully request that the CDD Supervisors reconsider replacing the guard at Sandpiper and declaring Championship Drive a residents' only gate. Thank you."*

*Also received from Pat and Jack Schiavo: "Dear Mr. Slater, For years the residents in the villages located on Championship Drive (Hawks Nest, Cardinal Cove, Cotton Green, Montreux, Deer Crossing) have been unfairly subjected to the dangers, noise and inconvenience of having construction vehicles, 18 wheel delivery trucks and service vehicles directed to enter and exit through the Championship Drive gate. Entering and exiting the villages by car is also dangerous due to the speeding of so many vehicles, as well as the inability of the large delivery trucks to readily stop. Residents who want to walk, jog or ride their bicycles are endangered while crossing Championship Drive to get to the sidewalks. There are several elderly ladies in Hawks Nest as well as many other residents who need to cross Championship Drive to walk their dogs or take walks for health and exercise. It is unfair to continue to subject them to the increased traffic of the many vendors, landscapers and delivery vehicles that are now servicing CDD2 as well as CDD1. The villages along Sandpiper are distanced from the road and the residents do not have to cross Sandpiper to gain access to the sidewalk. Additionally, the entrance gate at Sandpiper can easily accommodate 2 entrance and 2 exit lanes whereby commercial vehicles and service personnel can enter/exit the lane next to the guard house, thus*

*eliminating backups that continually occur at the Championship Drive gate with only one lane in and one lane out. The distance to the Sandpiper gate from the 951/41 intersection is the same as that to the Championship Drive gate. Thus, there should be little if any inconvenience to service personnel and vendors. We respectfully request that you vote that the Championship Drive gate be declared a "Residents Only" gate to enhance the safety, welfare and convenience of the residents of Fiddler's Creek."*

*From Ellen Courtemanche: "I do intend to be at the meeting on Wed. morning but still want to state my opinion in writing. I have lived in Deer Crossing for eight years. At the time of purchase, we were told that within a year or so the Championship Drive gate would be for residents only. Let's make this happen with the vote on Wednesday. Better late than never. We have endured delays too long. It is time to put the need of the residents up front. Vendors will accommodate the change in order to maintain their business. Please represent the owners here and vote to make the Championship gate for resident use only. Thank you. Please put this email on record."*

*From W. Lawrence Winter, Ph.D.: "Dear Fiddler's Creek CDD Board Members: Please allow me to add my voice to those calling for making the Championship Gate entrance to Fiddler's Creek a residents-only entrance/exit. My wife and I live in the Laguna community, and pass through the gate in question several times daily as we enter or leave Fiddler's Creek, so we are all too aware that the gate often is backed up with service vehicles of various types. In what is marketed as a first-rate gated community, this type of hassle just seems inconsonant with the promised and promoted lifestyle. The most important issue to be dealt with here, of course, is that of resident safety. I agree fully with those who lament the presence of heavy trucks – often violating the speed limit – in an area where residents, including the elderly, joggers, bikers and even small children regularly cross Championship Drive. With a Sandpiper entrance available for use of vendors of all sorts, there is no reason why the many residents (and their guests) in the area of Championship Drive should be subjected to the noise and dangers associated with the army of service vehicles that pass through the Championship Gate entrance each day. I am respectfully requesting that this note be read aloud to attendees at the CDD board meeting on September 23. Thank you for your consideration."*

*From Bob and Dot Allcorn: "Gentlemen – My wife and I are residents of Deer Crossing. Unfortunately, we are unable to attend the September 23<sup>rd</sup> CDD meeting. However, I would*

*appreciate it if you would read this correspondence into the record at that time. We are strongly opposed to continuing to allow commercial traffic through the Championship Gate. Now that there is a new gate, there is no reason to allow a substantial amount of commercial traffic through a residential neighborhood. It is not only annoying, but represents a significant danger to bicycle and other traffic on a narrow two-lane street. Taking our thoughts and concerns into account would be greatly appreciated. Thank you."*

*From Russ and Jan Rath: "We are among the residents who remember being promised a vendor gate off of Highway 41 when we purchased our Hawks Nest unit. The traffic at the Championship gate and along Championship Drive is busy and noisy. The gate is often backed up. We feel most vendors are probably coming from the Naples/Ft. Myers area – especially the large delivery trucks which would make the construction gate a better choice. Please make the Championship gate a resident's only gate and direct vendors to the construction gate as promised."*

*From Phil Martin: "Robert, I believe the Championship Drive gate should be declared a "Residents Only" gate now to ensure the safety, welfare and convenience of Fiddlers' Creek residents. Please consider this option strongly in your upcoming CDD meeting. Thank you."*

*From Michael Quill: "Mr. Slater, I am sure by now you are inundated with emails regarding the Championship Drive gate. Please include me, Michael Quill, Hawks Nest Village, in the push to have ALL vendors be required to use the 41 construction entrance and make do on the promise of years ago to have CD gate for residents only. I am aware that Kathleen Smith has written you and without being redundant I agree with all the points she is making. Thanking you."*

*From Charles R. Salvaggione: "CDD 1 Board Members: I understand that both CDD2, appointed by Gulf Bay, and CDD1, elected by residents of Fiddlers Creek, must both agree on the gate issue. The American Way, I do understand that we as citizens do not always agree with the decisions made by our elected officials, but we can always hope they look out for our best interests. Also the American Way allows us to question. 1) From my reading of the minutes of 6/24/09 a vote of 3-1 was made to unman the Championship gate. From those minutes, "Mr. Pires recalled that two (2) years ago, the discussion was to man the Championship Drive gate until everyone transitions to the new gate, with the final intent of going unmanned. Mr. Brougham said to his knowledge, the consensus, from the residents in the communities all along*

*Championship Drive, is that they want traffic reduced along this street.” Then this motion “On Motion by Mr. Brougham and seconded by Mr. Schutt, with all, except Mr. Robertson, in favor of authorizing Staff to prepare a Budget that presumes the Board is unmanning the Championship Drive Gate. (Motion passed 3-1)”. The minutes of 7/22/09 a motion was made to unman the Championship Gate. From those minutes “On MOTION by Mr. Schutt and seconded by Mr. Curland, with Mr. Slater in favor of unmanning Championship gate, with Mr. Brougham and Mr. Robertson dissenting. (Motion passed 3-2).” Why the change of heart? 2) From my reading of the meeting summary on 8/26/09, “The Board considered and approved the expenditure of approximately \$8,000 for the installation of remote control cameras and intercom devices at the Sandpiper gate for use when no gate guard is present. The cost will be paid from CDD #2 construction bond funds. Additionally after lengthy discussion the Board voted 3 to 2 in favor of removing the gate guard next fiscal year from the **Sandpiper gate**, resulting in an overall savings in budgeted Security costs of approximately \$50,000.” This leads me to believe that all commercial/vendor traffic will once again be going where? A motion was passed to unman **Championship gate**. Makes me think only the manned gate will be the main entrance, since construction, commercial and vendor traffic has to pass through a manned gate it would have to be the main gate. **Does this mean the gate to go unmanned will be up to the appointed CDD2 Board?** 3) Does the Board plan to make a motion to cancel a motion that has already been passed? Can the Board legally do this? Once again I realize CDD1 and CDD2 both have to agree. One would think that the CDD with the most residents would have a bigger say in this Gate Issue. I believe that all residents, either CDD1 or CDD2, all know that Championship Gate was designed and planned for a resident only gate. Respectively,”*

From Frank A. Adamo: “Dear Bob Slater and Jim Schutt, I am writing this email and I want it to be read out loud at the meeting. I am a 10 yr. resident of Hawks Nest and daily walker along Championship Drive. I was promised by Dennis Blanton who sold me my unit that the Championship Gate would be for RESIDENTS ONLY once the Construction Gate (Sandpiper Gate) has been opened. I request that all commercial traffic including workers, delivery trucks, etc. use the Sandpiper gate. I understand that the Championship gate may become an unmanned gate if this is enacted. All of us residents have gate clickers to open and close the gate so there should be no problem posed by this gate being a RESIDENTS ONLY gate. Sincerely,”



From Anita and Rob Haring: *"Dear Robert, It has been brought to my attention that the Sandpiper gate might be closed, directing all the non residential traffic through the back gate once again. My husband and I are long term full-time residents in Deer Crossing (since 2001). Since we both work fulltime it is next to impossible for us to attend Board meetings. But this issue is very important to us and I thereby request that my letter be read into the meeting minutes so my opinion can be heard. My husband and I strongly feel that the Sandpiper gate should remain manned and open for all traffic (residents, commercial, vendor, etc.) and the back gate on Championship Way be unmanned and for residents only. This accomplishes many things, it reduces costs by only having one gate manned, it directs commercial traffic away from residences close to the road (Hawks Nest, Deer Crossing, Cotton Green, Montreux and Cardinal Cove) and allows us residents to enter and exit onto 41. Since our lanai faces the street it would be nice to have a reprieve from all non residential traffic. Thank you for your time. Sincerely,"*

From Rick & Betty Coolman: *"Jim and Bob: My wife Betty and I wanted to let you know what are feelings are about this issue. We feel it's time to direct all construction traffic to the back gate. All residents, especially those who live along Championship, will be better served with this change. We've heard what we think to be all of the arguments on both sides and feel that now is the time to get this done. We appreciate your time and efforts on our behalf."*

From Arlene Minder: *"Dear Mrs. Smith, My name is Arlene Minder and I have a condo at 4610 Hawks Nest Drive, Unit 204 in Fiddler's Creek. I was told by Gulf Bay that once the building was completed along Championship Drive that the rear entrance would only be used by residents. I know the large 4 lane entrance of Sandpiper off 41 is open and I don't see why all commercial traffic can't come in that way, so we don't have to wait at Championship. Please see if my letter can get to the meeting and be read. Thank you. Sincerely..."*

From Kathleen Smith to Bob Highfield: *"Good Morning Bob! I spoke with Bob Slater. I think we have a chance with him. Al Love is going to call him today. What do you think of taking photos of traffic backed up? I am a dinosaur with cameras. Mr. Slater never uses the back gate so I think he needs to see it. The next problem we face is, if we get a 3 to 2 vote with CDD1, and CDD2 votes the other way...??? Do you have any thoughts on that? Have you spoken with Al Love? Did you say that you will not be at the meeting? We are close. Is there anyone else that will speak up? Thanks!"*

From Bob Highfield: *"Hi Kathy, I am still in Indianapolis and will not be back to FC until the end of Oct. I have sent my letter to Chuck Salvaggione, our Hawk's Nest HOA President and he told me that he had sent a letter to Phil Brougham. He is in Hawk's Nest full time and should be at the next meeting. Pictures are always good, but the worst times for the traffic problems are during season. I don't know if pix at this time would adequately show the problem unless someone could take pix when a truck is trying to get through the gate. Are there back-ups of cars during busy times?? It would be nice to have someone record what is happening at various times if someone has the time and desire to do it, but I don't know who it would be. If Chuck S. could get more residents of Hawk's Nest to write letters, that might help, but based on past situations, I don't know how many really care. There are a lot of apathetic residents in there. Good luck,"*

From Kathleen Smith to Mr. Slater: *"Bob, I am forwarding this to you because Mrs. Harring sent it to the "dead letter office" and I wanted to make sure you got it. Please confirm that you did. Thanks! The other issue I would like to address is...CDD1 has received letters that CDD2 will not hear. Because of the Interlocal Agreement, I am requesting that CD hold off on voting until they can hear the concerns of CDD1. Is this possible? Thanks!"*

Mr. Slater to Kathleen Smith: *"Kathleen, Thanks for forwarding Mrs. Harring's e-mail. (I did receive her e-mail also). If you are asking CDD2 to hold off voting until CDD1 discusses the issue, that cannot happen as CDD2 is first to discuss the issue and vote. If CDD2 votes one way and CDD1 votes the other both CDD's must resolve the issue. Hope this answers your concerns."*

Ms. Smith to Mr. Slater: *"Not really Bob. I want CDD2 to hear all the letters before voting. I just got off the telephone with Al Love. Maybe, CDD2 won't bring up the issue because all letters went to CDD1. Tail wagging the dog? I'm looking to you, Mr. Slater, to do what is right for the residents along Championship and not for a board that was not elected, but rather appointed with GB as the "assigners". Stand up for us! We need you! You've read the letters, now vote accordingly."*

Also from Kathleen Smith: *"Good Morning Bob! I know you have received letters from residents regarding the Championship Gate and will be reading them at Wednesday's meeting. I hope that you have also used that gate and can appreciate what is being said. I am hoping that you don't vote against unmanning Championship due to the Interlocal Agreement. I am*

*prepared to read a statement from one of the Supervisors saying "we may be able to cancel that agreement and then go from there". I do believe we are able to change that agreement and maybe there should be a meeting about the Interlocal. I am sure you are aware that CDD1 pays 70% of the costs. I am also prepared to question CDD2 and them being appointed and not elected. They represent the developer and not the residents. Gretchen and Manny don't even stay for CDD1's meeting! Mr. Robertson should not have 2 votes. Ms. DiNardo is...well, enough said. Please represent the residents along Championship! See you Wednesday."*

Mr. Brougham then called on Mr. Fritz. Mr. Fritz stated he is there four (4) months out of the year and the mix going in and out of Championship is changing. He indicated the commercial vehicles know where they are going; they know the process, but it jams up, even though they know what they are doing. He added there has been a big change as far as renters in Fiddler's Creek. He explained they come through the gate, they don't know what to do with the pass; have outdated passes; they argue with the guards and the traffic backs up eight (8) or nine (9) cars, including commercial, so for it to be unmanned would create a disaster October 1<sup>st</sup> and there is no place to turn around, or there is very little. The other day, the gates going out weren't working properly and there were cars lined up both ways. At least the guard was there to get the gates up. He then stated, as far as the noise factor, he believes most if it is renters on their motorcycles. He added their guests come in on motorcycles and it wasn't that way two (2) years ago; there weren't as many rentals two (2) years ago. He does not believe the noise is from the commercial vehicles.

Mr. Jack Perrin, a resident of Montreaux, stated he hopes the study that will be performed will be in the minutes. Mr. Brougham stated it will be in the packet available on CDD #1's website at least by the Friday before the meeting. Mr. Perrin stated his second point is, here they are again with Board #1 versus Board #2; there must be some way to resolve it. Mr. Brougham indicated that is what he is asking for. Mr. Perrin stated Mr. Brougham referred to an Agreement between the two (2) Boards and he asked if that is an oral agreement. Mr. Brougham stated it is a signed, legal, Interlocal Agreement that is currently binding between both Boards. Mr. Perrin asked under what circumstances it can be changed. Mr. Brougham stated it can be viewed on the CDD#1 website. There are terms and conditions under which it can be amended and/or cancelled. Mr. Brougham stated he does not believe getting the two (2) Boards together is going to resolve the issue. He added his opinion is that they have to find ways and means of making

the Interlocal Agreement more equitable. Mr. Perrin stated when Board #1 votes one (1) way and Board #2 votes another..." Mr. Brougham agreed that is where they have been and stated they need to find a way to mitigate that because it impedes progress and causes dissention and conflict. Mr. Perrin asked to hear from Mr. Robertson on behalf of CDD #2. Mr. Brougham asked Mr. Pires if this was appropriate. Mr. Pires stated Mr. Robertson can express his opinion and stated there is no conflict of interest.

Mr. Perrin asked Mr. Robertson for his views on the conflict that exists sometimes between Board #1 and Board #2 regarding the gates. Mr. Robertson responded he will try to answer that generally; not about the gates, but in a conflict between the Boards of Districts #1 and #2; he tries to look at what is in the best interest of the Fiddler's Creek community as a whole; not "us versus them" or "them versus us". The Agreement was written almost three (3) years ago and it was designed to protect the interests within the Board when they have a difference of opinion. Three (3) years ago, they felt it was probable that the time would come when they would have a difference of opinion. In order to resolve it, they have a legal and binding agreement between the Boards. Mr. Perrin asked what that Agreement provides. Mr. Brougham stated it provides for District Staff to resolve the issue. Mr. Robertson stated when they have an impasse that is not resolvable, it will be passed to the District Manager to arbitrate. Mr. Perrin stated that is why he has been referring to Mr. Adams. Ms. Smith indicated she thinks Mr. Adams should be there. Mr. Perrin asked Mr. Robertson if that is what happened the last time. Mr. Robertson responded affirmatively and stated that is exactly where they were two (2) months ago in August, because the District Manager said they have to resolve it somehow so that they can build a budget and that was the resolution. Mr. Brougham stated the discussion was around constructing the budget and for the benefit of Ms. Smith's comment, he will bring Mr. Adams up to date when he comes back into the meeting so that he can properly respond. Mr. Curland stated the budget is not going to change so this is not a budgetary issue. Mr. Brougham agreed and added, depending upon what they decide in October, it could go down.

A resident asked if this is moot because the Board did not rescind something that they already voted on as yet. Mr. Brougham stated the motion taken in July stands, and that was to make Championship unmanned. He noted they all agreed on that about half an hour ago. He indicated they also agreed to direct District Staff that the entire subject of gate operations will be revisited on the October Agenda. The resident stated they need to rescind the motion because

they have already passed it and it should be in Mr. Adams' lap right now to make up the difference of whether they are going to have the gate open or not have the gate open. Mr. Brougham stated that is not where we are. Mr. Pires stated the Board legally does not have to rescind a prior action in order to direct Staff to come back and report. The resident asked if they can have two (2) motions on the table. Mr. Brougham stated they can rescind any prior actions taken by the Board. Mr. Pires stated that does not preclude them from directing Staff to prepare back-up materials to have another hearing. Mr. Brougham stated they have not rescinded anything; gate operations are going forward exactly as they have been over the last year; nothing is changing. Mr. Fritz asked if they are going to have that information to present to CDD #2. Mr. Brougham stated he cannot speak for CDD #2. CDD #1's Staff has been directed to prepare the necessary Executive Summary with all of the details for them to consider at their October 26<sup>th</sup> meeting. Ms. Smith stated, if there is a conflict of interest between CDD #1 and CDD #2, why doesn't somebody from the CDD #2 Board sit in on their meeting and hear their requests. She thinks it would help them all if those people who are not there now understood their feelings and she thinks it is important for them to be at the CDD #1 meeting.

Mr. Quill, a resident, stated he noticed when Mr. Brougham proposed a study, he had about seven (7) or eight (8) qualifying factors and he didn't see anyone writing them down. Mr. Brougham indicated Mr. Adams was writing them down. Mr. Quill stated he agrees with Mr. Schutt that this is going to go on forever; it is a "Catch 22". Mr. Brougham advised it is going to be resolved in October and added all of these proceedings are tape recorded. In addition to that, the District Manager takes notes, so the conditions are there.

Mr. Chuck Salvaggione, a resident, stated he agrees with what Mr. Schutt said. He asked if CDD #2 wants to unman Sandpiper and CDD #1 wants to unman Championship and the Board does not rescind that, does it mean both gates will be unmanned. Mr. Brougham stated he does not know. He indicated that question goes to the heart of the Interlocal Agreement. He does not believe that the operation of the two (2) gates within CDD #1 should be at the decision of CDD #2 and added that is his personal belief.

A resident stated it is their gate, but if that happens and it is a tie and they are not going to run all of the commercial traffic and vendors through the main gate, Gulf Bay will not allow that. Mr. Brougham stated Gulf Bay does not sit on this Board. He explained right now, the way the Interlocal is worded, District Staff must resolve the conflict. He said this should not have been

this difficult and there needs to be an equitable solution for everyone. Ms. Smith stated all logic points to Sandpiper. She added she believes this is a Gulf Bay issue, which is why it has gone on for so many years. She said the residents have spoken and they have received the letters. She indicated the minutes are very difficult to read because Mr. Brougham always makes the suggestion that it is unmanned, but when it comes to the vote, he always dissents. Mr. Brougham stated he has never dissented on a vote. Ms. Smith stated Mr. Brougham dissented the last two (2) votes; he voted it down and he is the one (1) that made the recommendation to unman the gate. She stated she has lived here for eight (8) years and it was promised to her and she believes this is a Gulf Bay issue. She quoted the Club Manager, stating, "We want to keep that back area pristine." She expressed that it is very hard for the residents to get this passed because it always comes down to Gulf Bay.

Mr. Love indicated he was on this Board for four (4) years and he stated publicly, as well as on the Board, that he had a problem with the minutes. He said even though he is now a resident, he goes to the packet, he reads the minutes, and there are omissions everywhere. There are many things that are not in the minutes that were discussed, particularly by residents, or perhaps of an opinion that it is not appropriate. Mr. Brougham agreed and stated he voted in favor of that, along with Mr. Schutt. He added Mr. Schutt voted in favor of it the last time and Mr. Love and Mr. Brougham voted in favor the first time; he is still in favor of it. He advised they will make another motion next month, or whenever they feel it is appropriate, and see how it goes. He added in his opinion, it is not that expensive; it is good for the legal record, particularly when they are getting sued by landscapers and such. He indicated he agrees with Mr. Love's comment and that he personally has tried to do that before and did not have the support of the Board.

Mr. Blitcher, a resident, asked if there is an issue that relates to the two (2) Boards, why don't they have a joint meeting on that issue. Mr. Brougham stated they have done so before. Mr. Blitcher asked if they have met on this issue. Mr. Brougham responded not specifically, that he recalls. Mr. Blitcher stated everyone could talk it out and there is a good chance they could all resolve it. Mr. Brougham indicated he would react favorably to that; however, based on the prior votes, in prior joint meetings, each Board participates in the discussion, but when it comes down to each Board voting on a motion, unless opinions can be changed radically, it will be a joint session with each Board voting the way they have voted previously and they have gotten

nowhere, at that point. Mr. Blitcher said he was told that the entrance off of 41 was going to be the construction entrance. Mr. Brougham advised that it is. Mr. Blitcher stated what you are talking about now is the landscapers coming in, etc. Mr. Brougham explained they are talking about everybody except those who are authorized to come through that gate with a gate clicker, be it a resident, a renter, or those with a bar code on their car that says Staff. He further explained the item of contention is the plumbers, landscapers, UPS, garbage trucks, furniture delivery – all of the above. Right now, they all come in through Championship. He noted heavy construction has always been directed up to Sandpiper, but there is no construction now. Mr. Blitcher stated it seems so logical to use the Sandpiper entrance. The Developer has already agreed so they are talking about individual homeowners that have someone coming, which is why he feels they should have an open joint meeting. Mr. Brougham indicated it is an idea they will consider. He stated they have given direction to the Board that CDD #1 needs to consider its motion and its options under its jurisdiction first.

Ms. Kletz, a resident, asked why they can't issue an invitation to CDD #2 to join in the meeting and hear the concerns. Mr. Brougham stated he was surprised that as many of the residents were in attendance for the CDD #2 meeting. He indicated there was not one (1) comment made in the CDD #2 meeting regarding gate operations and many of them sat through that meeting. One (1) of the residents stated it never came up. Mr. Brougham indicated they have an opportunity to bring it up under Audience Comments. He explained that any member of the public is free to bring up any topic under Audience Comments, whether it is on the Agenda or not. A resident asked if that was true for CDD #1 and CDD #2. Mr. Brougham indicated it is a public meeting and they are entitled to make comments.

A resident stated he has been there for seven (7) years and during that time, they have always been promised that exit was for residents only.

The resident stated they are talking about three (3) gates. Mr. Brougham stated they cannot exclude the full facility gate.

Mr. Green, a resident, stated the quantifier should be residents and non-residents. He indicated they do not need to know how many garbage trucks pass through, or vendors, landscapers – it should be residents or non-residents. Mr. Brougham stated that is the main division. He explained there is one other consideration to put in the mix and that is between Mass Mutual and the Districts and/or the Developer and the successor Districts; it is an

agreement with Mass Mutual, which is the Marriott Golf Club, that all of their members and guests must be provided unimpeded access through Championship. He noted right now, that is facilitated by the issuance of clickers. He indicated they need to start there, but there are bound to be questions as far as breaking down the classifications, so if they get as much detail as possible from the gate software, they will have all of the facts.

Ms. Courtemanche, a resident, stated she has a question regarding the token email that Mr. Brougham read and then he read the names of others that sent emails and she was confused because there were many emails generated. She asked if the person who wrote an email specifically said they want it entered into the minutes, is it being disregarded. Mr. Brougham stated it is saved in his personal email and his CDD email account, if it went there. He advised it has not been deleted and he read all of the ones that came to him. There were only the ones to him that cited specifically "read this into the record". He read them all. Ms. Courtemanche stated unless they specifically cited "I want this entered", it is not being officially entered. Mr. Brougham stated that is correct.

Mr. Slater advised he has 19 others, other than those that Mr. Brougham has, that he will put in the record. He indicated they may have only been sent to Mr. Slater, to Mr. Schutt or to Mr. Brougham. He added, in addition, he has a spam filter and until Ms. Smith called him, any emails that were sent to him disappeared because he did not know who they were. They came in on his personal email.

Ms. Smith stated she presented a letter today stating all of the email addresses were incorrect.

Mr. Adams stated with regard to the items that were provided to him, it was with the understanding that they will enter the author and the content, verbatim, into the minutes because that was what was asked, short of reading them in their entirety, unless they have asked for them to be a part of the minutes, which are publicly published on the website.

Mr. Slater stated he does not care if they said they want it or not; he wants them in the minutes because they came to him and they are their opinions.

Mr. Adams stated that is fine, but he would want to make sure the authors want that because, while they are public record, in this case, they actually post the minutes on the website for everyone to read. He added, personally, he would want to ask each one (1) if they want them in the minutes, which he would be more than happy to do. They are posted on the website for



people to read in their entirety and yes, they are public record, but unless somebody is asking for them, they are not going to see them. He explained there is a difference between public record and posting it on the website for everyone to see and he would want to ask the author if that is what they want; he feels the courtesy should be extended. He advised Mr. Slater that he has them and they are public record, but at this point, someone will come to him and ask to see them, versus having them on a website.

Mrs. Roberts, a resident, stated in your study, maybe you should consider keeping all three (3) gates manned. Mr. Brougham indicated he is not precluding anything. He thinks they need to put all of the resources that they have available on the table and come to a consensus that is for the benefit of the majority in Fiddler's Creek. He added he speaks of the residents and he is not discouraging the developer; however, the developer does not have a vote at this table and they have to do what is right. Ms. Roberts stated it seems like it would make more people happy. Mr. Brougham stated he tends to agree, but it needs to be discussed among all of the people next month. He added he wanted to emphasize there are some potential solutions with spending some capital money that might remove some of the objections that some of the residents have.

Mr. Adams provided an update to the Board for their CDD email addresses. He indicated he was also providing the instructions to set up their emails and advised the Board they should feel free to call him if they had any questions.

Mr. Brougham advised the Board that there is a feature in the CDD email account where they can click on it and it will forward the email to their personal email, so it resides in the CDD email bucket, but it is also automatically forwarded to their regular email account.

Mr. Pires stated if there is a desire of the Board Members of CDD #1 to participate in the audience for CDD #2 and they wish to engage in a dialogue with any issue coming before CDD #2, if there are two (2) or more CDD #1 Board Members in the audience, the way the notices are going out now for the meetings, they cannot have that kind of discussion. CDD #2 can be noticed with the caveat that members of CDD #1 may also be present and may participate in discussions and the converse be true for CDD #1; members of CDD #2 may be present during CDD #1 Board meetings. Mr. Brougham indicated that might be a good idea; it will cover their bases legally and protects them from Sunshine Law violations. Mr. Pires stated the key is that it has to be in the advertised Notice of Meeting and also in the Agenda packet. Mr. Adams asked

them to email the specifics to him and he will make sure it gets inserted into both of the advertisements.

Mr. Brougham indicated he has a check for \$71,761.76 from the Developer.

**EIGHTH ORDER OF BUSINESS**

**Staff Reports**

*\*\*\*This item, formerly the Seventh Order of Business, we presented out of order.\*\*\**

**a. Attorney**

There being no report, the next item followed.

**b. Manager**

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

Mr. Adams presented the Unaudited Financial Statements as of August 31, 2009. He stated proceeds were received related to their Tax Certificate sales, noted under Current Month Assessment Levy. He noted the year-to-date percentage is 102% over budget on that particular line. He indicated with the check received from the Developer, they are at 100% on the off-roll Developer assessment, year-to-date.

Mr. Brougham gave his compliments to Mr. Adams' Accounting Staff, because for the last several months, he has not picked up any aberrations at all.

Mr. Adams stated on Page 7 of the Financials, under Current Month Developer Assessment, the assessment levy was proceeds coming through the Tax Certificate Sale, but the Developer Assessment is \$66,666; they paid their outstanding assessments due on this particular series, so their obligations for the 1999 series have been met. Those properties will not be subject to the foreclosure.

Mr. Brougham asked if everyone read the letter from Mr. Gonzalez. He stated the original iteration of that letter cited the unpaid debt between both Districts was in excess of \$5.9 million. He noted that was an incorrect number; it has since been corrected to \$4.15 million. Mr. Adams stated the original number was the annual amount, without taking into consideration the fact that they made the interest-only payments back in November, and once that was deducted, the outstanding debt is truly \$4.15 million and it has been re-posted with the correct number.

**ii. NEXT MEETING DATE: October 28, 2009 at 8:00 A.M.**

**c. Operations Manager**

Ms. Crismond stated they are going out to bid for Access Control Services, as well as the Lake Maintenance contract. Those will be presented at next month's meeting. The South Fountain is down; it has been down since last Thursday. Upon speaking with the contractor, it has been indicated that the pump has broken and it is possibly a manufacturer's defect. They do not know for sure. She has no further updates at this time.

On the Canopy Tree Reduction Program, they met with the County last week and the County gave the green light to move forward. They set out for bids, which are due back no later than September 30<sup>th</sup>. Then they will make a decision on which contractors they are going to retain to proceed with the tree trimming project, which will commence some time in October.

With regard to the street lights and signage, the first phase of the project was completed in August, where they did the bases, cleaned the bulbs out and replaced fixtures. Management was then asked to obtain a quote to do the entire post painting. The first phase will be \$15,082.00; the second phase, which is the side streets, will be \$13,161.00. Mr. Brougham confirmed that, right now, they have painted all of the bases, except for the side streets. Ms. Crismond stated they broke it out into two (2) phases. A Board Member asked what it would cost to do Phase II, bases only, to bring them up to the same standard as Phase I. Ms. Crismond indicated maybe \$10,000.

Mr. Adams asked if they want to complete Phase I now and go up the pole for the \$15,000 and maybe consider Phase II for the following year. He indicated they did the bases for \$15,000, now they are asking for another \$15,000 to do the remainder of the poles, so the base and the poles, along the Parkway and Championship, will be completely painted, at this point. He noted they will be good for another eight (8) – ten (10) years. He suggested they may wish to consider doing the side streets as a part of next year's budget. He explained the \$13,161 is for the base and poles on the side streets, so they will be essentially done with repainting for eight (8) to ten (10) years, if they decide to only do the \$30,000 now. He added there is \$40,000 budgeted for roadway maintenance; there is still \$10,000 remaining.

A Board Member stated he is concerned about corrosion and long-term damage if they don't paint and preserve those fixtures. Mr. Adams stated they do fade, over time, so in protecting the base, you have to do the entire thing.

**On MOTION by Mr. Brougham and seconded by Mr. Curland, with all in favor of completing Phase I, in the amount of \$15,082.**

Ms. Crismond stated the last item is the update for the stats from the Patrol Service. Mr. Brougham asked how many times he was in. Ms. Crismond stated she did not have the total times they were there. Mr. Brougham asked Ms. Crismond to annotate the number of visits, in the future.

**EIGHTH ORDER OF BUSINESS**

**Audience  
Requests**

**Comments/Supervisors'**

Mr. Schutt stated the Board Members have a difference of opinion as to the interpretation of the Interlocal Agreement. His interpretation says he does not have to get the approval of CDD #2 to make the changes they have been considering. There are two (2) points that say they must get agreement: one (1) is the change in allocation, which they are not doing, and the other is an increase in cost, which they are not doing. For anything else, they can do whatever they want to and it does not require CDD #2 approving it. He indicated they are interpreting it differently and asked how they resolve that difference. Mr. Brougham stated he is not interpreting it different. He said it has been interpreted differently in the past; he said he does not like the way it is worded. It only speaks to cost changes; it doesn't speak to changes in services. Mr. Schutt stated let's do what we want to do.

Mr. Brougham stated he thinks they are going to hash this out at the October meeting and, as far as he is concerned, they need to start all over. Mr. Schutt stated the problem is, if you read through the Agreement, it says they have to give them thirty days notice before the anniversary date, which is coming up in five (5) days, so they cannot do that; they can either breach the contract, which they have the opportunity to do, or they can go ahead and do what they want to do, considering that the contract says they can do it, and go forward and see what happens. Mr. Brougham stated he does not disagree; they are going to decide what to do in October.

Mr. Brougham stated, with respect to the Interlocal Agreement, as currently constituted and agreed upon, he asked Mr. Pires if his interpretation is the same as Mr. Schutt has voiced and

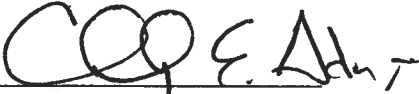
he concurred with, in that it only speaks to changes in cost or changes in allocation. Mr. Pires stated if either Board disagrees with the other, then he has a conflict of interest.

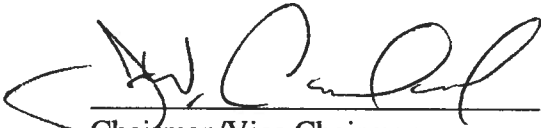
**NINTH ORDER OF BUSINESS**

**Adjournment**

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

The meeting adjourned at 12:10 p.m.

  
Secretary/Assistant Secretary

  
Chairman/Vice Chairman