

**MINUTES OF MEETING
FIDDLER'S CREEK COMMUNITY DEVELOPMENT DISTRICT #1 &
FIDDLER'S CREEK COMMUNITY DEVELOPMENT DISTRICT #2**

A Joint Public Hearing and Regular Meeting of the Boards of Supervisors of the Fiddler's Creek Community Development District #1 and Fiddler's Creek Community Development District #2 was held on **Wednesday, July 28, 2010 at 8:00 a.m.**, at the **Fiddler's Creek Club and Spa, 3470 Club Center Boulevard, Naples, Florida 34114.**

Present at the meeting were:

For Fiddler's Creek CDD #1:

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

For Fiddler's Creek CDD #2:

James Robertson	Chair
Manuel Correia	Vice Chair
Victoria DiNardo	Assistant Secretary
Gretchen Scott	Assistant Secretary
Peggy Schmitt	Assistant Secretary

Also present were:

Chuck Adams	District Manager
Terry Cole	District Engineer
Tony Pires	District Counsel
Doug Gonzalez	Special Counsel
Jack Perrin	Resident

FIRST ORDER OF BUSINESS

Call to Order/Roll Call

Mr. Adams called the meeting to order at 8:00 a.m., and noted, for the record, that all Supervisors, for both Districts, were present, in person.

JOINT MEETING ITEMS

SECOND ORDER OF BUSINESS

**Update: Foreclosure Claim/Bankruptcy
Filing**

Mr. Gonzalez indicated, since the last meeting, a hearing was held regarding the debtor's request for their third interim financing. As a result of the hearing, the court approved and, essentially, overruled all remaining objections to the requested additional 13-week time period. At some point, the CDDs will receive the sums they agreed upon, in order to assist in the continuation of operations. Mr. Gonzalez indicated the drawback is there is a bank that has made issues to the form of the order, so the order has not been submitted and is not yet an executed order by the judge, which would allow the debtors to pay the CDDs. He summarized this leaves things a bit in limbo, it is just a matter of waiting for the Regions Bank issues to be resolved.

Mr. Gonzalez indicated two (2) additional major properties in Callista and Cranberry Crossing were sold; both orders approved in bankruptcy court contain the amounts owed to the CDDs for assessments, so the CDDs are fully covered upon the sale of those properties. He expects the amounts to be received quickly.

Mr. Gonzalez indicated the next large set of hearings in bankruptcy court will be held in September. This will be the next time the debtor will be in court requesting interim or permanent financing. Up until now, neither he nor trustee's counsel have heard anything about what is happening, in terms of the debtor trying to locate permanent financing.

Mr. Gonzalez noted a bankruptcy hearing is scheduled for August 12th to consider whether this bankruptcy constitutes a single asset real estate filing; meaning, it was filed to protect one (1) piece of property and, if so, often times it is more difficult for the debtor to remain in bankruptcy. The CDDs were asked to support the trustee in their argument they have standing to argue that motion. The trustee believes this is a single asset bankruptcy; thus, the court should keep a tight rein on it. There must be a determination of whether the trustee and the bondholders have standing to bring that action. Mr. Gonzalez voiced his opinion that there is no need for him to attend the August 12th hearing or file any documents, prior to that time.

Mr. Adams asked Mr. Gonzalez to share his opinion of any legal ramifications of this issue. Mr. Gonzalez indicated if the CDDs were to file something in court arguing in favor of the trustee or bondholders having standing and the court rules otherwise, the CDDs could lose

some perception in the eyes of the court. If the CDDs do not support them, then the trustee may reopen the idea of suing the CDDs, as they have in the past. Mr. Gonzalez noted the trustee's counsel has assisted the CDDs and, should the trustee and bondholders have standing on this matter, they would be making essentially the same arguments as the CDDs, giving the CDDs another entity supporting its arguments.

Mr. Brougham recalled discussion about the bondholders pleading for standing and that they were a creditor of a creditor. He felt they are trying to make another run, from another direction, trying to achieve the same result or standing. His opinion was, since the District's did not support it the last time, they should not support it this time.

Relative to the claim that this is a single asset bankruptcy, Mr. Schutt asked how that comports with the fact that there are 28 affiliates and asked Mr. Gonzalez' opinion of the validity of the argument. Mr. Gonzalez indicated, based on the initial filing and other documents he reviewed, this might be the sole asset of the bankruptcy; he has seen nothing about other properties, outside of Fiddler's Creek. Mr. Gonzalez confirmed his belief that this is a single asset bankruptcy.

Mr. Brougham asked how that works for, or against, the bankruptcy case, on behalf of the debtors, should the judge rule this to be a single asset bankruptcy. Mr. Gonzalez indicated, a single asset bankruptcy is seen as a tactic to speed up foreclosure; however, in this case, the debtor has shown potential for reorganization, even as a single asset case.

Mr. Gonzalez referred to the August 12th hearing explaining, if the court agrees to the single asset argument, it puts pressure on the debtor to obtain permanent financing as quickly as possible. Mr. Schutt asked if Regions Bank could possibly make this argument, if the trustee is not allowed to do so. Mr. Gonzalez replied affirmatively. Mr. Schutt asked what Mr. Gonzalez meant when he said Regions Bank objected to the form of the filing. Mr. Gonzalez indicated it means the bank does not agree with some of the language in the order and does not want the order filed until Regions Bank and the debtors agree on the language. Mr. Gonzalez felt the debtor would proceed with filing the order, along with a letter that Regions Bank does not agree.

Relative to the sales, Mr. Schutt asked if there were any arguments as to the distribution of the proceeds. Mr. Gonzalez indicated there were no problems.

Ms. Scott asked if Regions Bank was most culpable in the bankruptcy and felt the Districts should not necessarily support anything they want. She questioned if the single asset theory would work as a detriment to the community.

Mr. Robertson asked if it is in the Districts' best interests to be aligned with the trustee's counsel but took issue with their threats of "do what we want, or we will sue you".

Mr. Brougham asked for confirmation that the bondholders' trustee is filing the motion for the single asset status. Mr. Gonzalez replied affirmatively. Mr. Brougham felt the Districts should take no action.

On MOTION for Fiddler's Creek CDD #1 by Mr. Brougham and seconded by Mr. Curland, with Mr. Robertson and Mr. Slater in favor and Mr. Schutt dissenting, taking no action and not joining the trustee's motion for single asset position, was approved. (Motion passed 4-1)

On MOTION for Fiddler's Creek CDD #2 by Mr. Robertson and seconded by Ms. Scott, with all in favor, taking no action and not joining the trustee's motion for single asset position, was approved.

Mr. Adams indicated Management was recently notified by trustee's counsel that they put a stay on funding any additional money from the debt service reserve or construction accounts into the remedial account, from which the Districts pay expenses related to the foreclosure/bankruptcy actions. He summarized, from this point forward, the Districts are essentially on their own. Mr. Brougham asked if legal fees can be recouped from the bondholders' accounts, once this is complete. Mr. Adams felt the Districts would have leverage later, depending on the outcome and whether this goes into foreclosure. Mr. Gonzalez noted if this goes to foreclosure, they would include an award of attorney's fees and costs in the foreclosure order that is submitted. Mr. Gonzalez indicated he is making every effort to keep the Districts' costs at a minimum.

Mr. Robertson felt counsel could have been more timely in notifying the Boards of the August 12th hearing. Mr. Adams indicated Mr. Gonzalez contacted him and he felt confident the Boards would take the position they took earlier in the meeting.

Mr. Curland asked how much is owed to the attorney. Mr. Adams indicated they are now caught up. Mr. Brougham asked what damage this will do to the reserves. Mr. Gonzalez indicated he was hopeful, the third interim order would be signed, giving the Districts an infusion of funds. Mr. Adams indicated there was a commitment to pay the shortfalls. Mr. Adams indicated he received word that the order was signed a few days ago. Mr. Adams indicated the monthly off roll assessment checks were delivered to him this morning.

Referring to lake bank erosion and the Belle Meade Preserve, Mr. Adams indicated he discussed with Mr. Gonzalez whether the bankruptcy has any bearing on the Districts' requirements to maintain or restore those projects. Mr. Gonzalez indicated the responsibility to maintain still exists. Mr. Adams indicated title under the lake and the permit are in the developer's name and the Districts assumed ownership of the improvement; essentially, the hole in the ground and interconnecting pipe work and maintenance of the asset since completion. Mr. Adams asked that Mr. Gonzalez prepare a memo regarding the situation. Mr. Gonzalez confirmed his feeling that none of the obligations of any of the parties are altered by virtue of the bankruptcy. Mr. Pires indicated his past experience in a similar bankruptcy situation was that, once the developer was discharged from bankruptcy, their obligations under South Florida Water Management District (SFWMD) permits went away, according to the order and the CDD was told they were responsible.

Regarding the Belle Meade Preserve, Mr. Adams indicated the Districts have been paying the restoration of the preserve area over the last couple of years, to bring it into compliance. Mr. Adams stated there is thought about transferring the preserve over to the Districts and asked Mr. Gonzalez if the bankruptcy plays any part in that process. Mr. Gonzalez felt the Districts would need any court approval to do it. Several Board Members voiced their opinion that the Districts do not want to take it over and do not want the responsibility. Mr. Adams indicated it is an integral part of the stormwater management system and it may be difficult to not take it over. Mr. Gonzalez stated if the Districts want to relinquish or abandon it, then it would go to the bankruptcy court but was unsure the court would allow the Districts to take that course of action.

Mr. Adams was unsure the trust indenture would allow for that, either, since bond dollars have been spent on the improvement and it was part of the overall infrastructure program. A Board Member commented that is just speculation and asked if there is a valid reason to explore the legal ramifications and find a way to not take it over. Mr. Adams indicated Mr. Pires could research that issue.

******Mr. Gonzalez left the meeting.******

THIRD ORDER OF BUSINESS

**Affidavits of Publication for July 28, 2010
Public Hearing and Regular Meeting**

- **Fiddler's Creek Community Development District #2**
- **Fiddler's Creek Community Development District #1**

Mr. Adams presented the Affidavits of Publication for today's Public Hearing and Regular Meeting.

FOURTH ORDER OF BUSINESS

**Public Hearing to Hear Public Comment
and Objections to the Adoption of
Amendments to the Rules of Procedure**

Mr. Brougham asked the impact, should the Boards not agree to exactly the same wording. Mr. Adams indicated it could impact how some business is conducted, going forward; particularly if there are issues on things of a joint nature.

Mr. Adams presented the redline copy and final copies of the proposed amendments and Mr. Pires reviewed and explained the changes. The following changes were made:

CDD #2, Page 4, Item E and Page 5, Item A: Change "1" to "2"

CDD #1 & #2, Page 5, Item H, Line 7: Insert "or at any public meeting of the Board" after "bid/proposal"

Mr. Jack Perrin, a resident, asked about a Board Member knowing of a vendor. Mr. Pires confirmed this allows for that. Ms. Scott indicated it just precludes communication after the competitive bid process has begun.

Additional discussion ensued regarding the amendments. No other additions, corrections or deletions were made to the proposed amendments.

Discussion ensued regarding existing contracts, terms and notices required. Mr. Adams indicated the major change is that the rules are now more inline with the statutes and some of the prior restrictions on the Boards are removed.

*****Mr. Adams opened the Public Hearings for both Districts.*****

No members of the public spoke.

*****Mr. Adams closed the Public Hearings for both Districts.*****

- **Consider Resolution 2010-8, Amending the Rules of Procedure of the Fiddler's Creek Community Development District #2**

On MOTION for Fiddler's Creek CDD #2 by Ms. Scott and seconded by Ms. DiNardo, with all in favor, the Adoption of Amendments to the Rules of Procedure, as amended, was approved.

- **Consider Resolution 2010-7, Amending the Rules of Procedure of the Fiddler's Creek Community Development District #1**

On MOTION for Fiddler's Creek CDD #1 by Mr. Brougham and seconded by Mr. Robertson, with Mr. Curland and Mr. Slater in favor and Mr. Schutt dissenting, the Adoption of Amendments to the Rules of Procedure, as amended, was approved. (Motion passed 4-1)

FIFTH ORDER OF BUSINESS

Continued Discussion: Belle Meade Preserve Community-Wide Benefit/Cost Sharing

For the audience's benefit, Mr. Brougham explained the location of the Belle Meade Preserve. He indicated, until now, the bondholders were paying for the clearing of the area, as it is required under the permits issued to the developer. Mr. Brougham stated the area is now at the point where the vegetation is clear and the developer wants this turned over to the Districts for maintenance. He noted the cost for the next fiscal year is approximately \$60,000. The issue now is whether the area is to be commonly maintained by both Districts or is it the responsibility of just one (1) of the Districts.

Mr. Pires' understanding was that all of the water from both Districts ends up discharging through that area and felt that both Districts should be co-permittees, upon transfer of the permit, by SFWMD. He indicated it should be a shared maintenance responsibility. He advised, should one (1) District become the permittee, they could impose a schedule of rates and fees on the other District for utilization of the preserve. Mr. Pires indicated the most logical approach is for both parties to be co-permittees.

Mr. Brougham questioned the downside if just one (1) District is the permittee. Mr. Pires indicated the one District would have all of the obligations, under the permit, including the operation and maintenance and that District would be subject to any enforcement, along with bearing the costs.

Ms. Scott asked if there are any preserve lands in CDD #2. A Board Member asked if it was logical to assume that any other CDDs, that are established, and will use the preserve, be included as a permittee. Mr. Pires suggested that the Districts could appear at any hearings establishing new CDDs and request that the new District contribute. Discussion ensued regarding preserve land in future CDDs. Mr. Cole indicated the plan for CDD #3 includes more preserve area than currently exists and the presumption is that it will only be draining through the preserves that will be within its boundaries.

Discussion ensued regarding the cost sharing split. Mr. Brougham asked if there could be a separate contract with the contractor for maintenance of the preserve, rather than including it with each District's individual maintenance contracts. Under the current terms, the cost share split would be 31% for CDD #2 and 69% for CDD #1 but the share is subject to change.

On MOTION for Fiddler's Creek CDD #2 by Mr. Robertson and seconded by Mr. Correia, with all in favor, acknowledging that both Districts benefit from the operations and maintenance of that portion of the overall water management system, commonly referred to as the Belle Meade Preserve, each District agrees to pay for the unique costs associated with the maintenance of said Belle Meade Preserve, as allocated on the same basis as other shared cost items, was approved.

On MOTION for Fiddler's Creek CDD #1 by Mr. Schutt and seconded by Mr. Brougham, with all in favor, acknowledging that both Districts benefit from the operations and maintenance of that portion of the overall water management system, commonly referred to as the Belle Meade Preserve, each District agrees to pay for the unique costs associated with the maintenance of said Belle Meade Preserve, as allocated on the same basis as other shared cost items, was approved.

▪ **Staff Report – Engineer**

****This item, previously Item 8b., was presented out of order.*

For Fiddler's Creek CDD #1, Mr. Cole presented Draw 48, for approximately \$6,000, for the Belle Meade Grade clearing, bimonthly maintenance, professional fees related to inspection and work related to permitting of relocation of the backflow assembly. In response to a question, Mr. Cole indicated maintenance costs would start being incurred once the area is turned over to the Districts; until then, the costs will continue to be paid through bond funds.

For Fiddler's Creek CDD #2, Mr. Cole presented Draw 65, for the 2003 Series bond, for approximately \$128 for work related to extension of a permit. Draw #56, for the 2005 Series bond for approximately \$20,000 related to completion of the Sandpiper Drive entrance security arms and professional fees related to the water use permitting. Draw #55, for \$76,000 for soft costs related to bonding of completion of the subdivision improvements; they are trying to get the subdivision completed so the bonds can be released from Collier County.

In response to a question about temporary barriers at Cranberry and Cherry Oaks, Mr. Cole indicated concrete barriers will be put in place in a few weeks.

Mr. Cole reviewed the FPL performance guarantees, indicating FPL is requiring performance guarantee money upfront because there is very little development going on. This will be returned, on a pro rata basis if a certain number of units go in. He indicated the total budgeted for this was \$400,000 and the amount is \$345,000; Mr. Adams will be given the forms to sign and the invoices will be included in the next pay draw.

i. Update: Lake Bank Erosion Evaluation and Dialogue with SFWMD

Mr. Cole reported that June 4th the developer received a letter due to erosion issues around various lakes. He submitted a response on July 1st advising them that the Districts were

in the process of identifying the problem and possible solutions and would provide an update by mid August. Mr. Cole presented pictures of the lakes reviewed by the inspector. He explained causes for the erosion include type of soil, age, structures around the lakes impacting wave action, spraying of vegetation and plantings. Mr. Cole discussed various repair methods. Discussion ensued regarding repair methods, effectiveness, costs and funding options. Mr. Adams indicated the trust indenture allows for the use of bond proceeds to restore and repair infrastructure assets. Mr. Adams feels this is worth trying to obtain the funding though the bonds; however, if they refuse, the Districts may have the legal obligation. Discussion ensued regarding the developer holding the permits and whether the Districts are responsible now, or not until they take over the permits. The Boards discussed littoral planting options.

Mr. Cole will present the situation to the bondholders, indicating their asset is in jeopardy and this is what is needed to maintain the lake banks and come into compliance.

SIXTH ORDER OF BUSINESS

**Approval of Minutes of June 23, 2010
Joint Regular Meeting**

Mr. Robertson presented the June 23, 2010 Joint Regular Meeting Minutes and asked for any additions, deletions or corrections. The following changes were made:

Lines 81 – 82: Delete the sentence “Mr. Abbott summarized that a judge may not grant a motion because all parties are in agreement or because there is no objection.”

Line 84: Change “the request” to “not objecting to motion”

A Board Member voiced his opinion that the minutes have gone from nearly verbatim to being a generalized statement with numerous comments not being included. Mr. Adams indicated it is not intentional.

Line 170: Change “Road” to “Lane”

Line 171: Insert “to the District Manager” after “violation”

Line 182: Change “warrants” to “warnings”

Line 202: Change “and” to “prior to”

Line 206: Change “operating” to “water management”

Line 210: Change “in tact” to “intact”

Line 230: Insert “to be” after “payment”

Line 252: Change "short fall" to "shortfall"

Line 259: Change "Slater" to "Schutt"

On MOTION for Fiddler's Creek CDD #1 by Mr. Brougham and seconded by Mr. Schutt, with all in favor, the June 23, 2010 Joint Regular Meeting Minutes, as amended, were approved.

On MOTION for Fiddler's Creek CDD #2 by Ms. DiNardo and seconded by Ms. Schmitt, with all in favor, the June 23, 2010 Joint Regular Meeting Minutes, as amended, were approved.

SEVENTH ORDER OF BUSINESS

Other Business

Mr. Brougham indicated there was lightening strike a few weeks ago that disabled the gates for a week or more. He indicated the Districts installed a lightening rod protection system a few years ago and asked what recourse they have against the company that installed it, as their technology did not work. Mr. Adams indicated they are still working on this; the expense for repair was about \$3,700.

EIGHTH ORDER OF BUSINESS

Staff Reports

a. Attorney

There being nothing further to report, the next item followed.

b. Engineer

i. Update: Lake Bank Erosion Evaluation and Dialogue with SFWMD

This item was addressed during the Fifth Order of Business.

c. Manager

i. Clarification: "New" Camera Install at Championship Gate

Mr. Adams explained a replacement camera was installed, not a new camera.

ii. NEXT MEETING DATE: August 25, 2010 at 8:00 A.M.

Mr. Adams stated the next meeting is scheduled for August 25, 2010.

d. Operations Manager

There being no report, the next item followed.

Mr. Slater asked about an alarm that was going off for an extended period of time. It was indicated the first course of action is to try contacting the homeowner and/or the property management company in an attempt to notify the owner.

FIDDLER'S CREEK CDD #2 ITEMS

NINTH ORDER OF BUSINESS

**Continued Discussion: Fiscal Year 2011
Proposed Budget**

Mr. Adams indicated there were few changes from the previously reviewed budget. He noted the Belle Meade Preserve cost share portion will be \$18,600, added to the water management/other contractual line item brings the expense to \$60,600. Ms. Scott asked if it could be listed separately, since it is a cost sharing item. Mr. Adams indicated he will add a line item entitled other contractual/shared and expand the write up to explain it. He noted other changes including the addition of \$10,000 to legal foreclosure and a reduction in the contingency from \$48,000 down to \$20,000. This results in an assessment of \$1,501 per residential unit and \$1,388 per off-roll unit.

TENTH ORDER OF BUSINESS

**Unaudited Financial Statements as of
June 30, 2010**

Mr. Adams presented the Unaudited Financial Statements as of June 30, 2010.

ELEVENTH ORDER OF BUSINESS

**Audience
Requests**

**Comments/Supervisors'
Requests**

There being no Audience Comments or Supervisors' Requests, the next item followed.

TWELFTH ORDER OF BUSINESS

Adjournment: Fiddler's Creek CDD #2

There being no additional business, all were in agreement with adjournment.

On MOTION for Fiddler's Creek CDD #2 by Mr. Robertson and seconded by Ms. DiNardo, with all in favor, the meeting adjourned at 10:18 a.m.

FIDDLER'S CREEK CDD #1 ITEMS

THIRTEENTH ORDER OF BUSINESS

**Continued Discussion: Fiscal Year 2011
Proposed Budget**

Mr. Adams indicated there were few changes from the previously reviewed budget. As a result of those actions, he noted, the transfer of \$18,600 of the Belle Meade Preserve cost to CDD #2, CDD #1's water management/other contractual line item was reduced to \$191,400. Mr. Adams indicated he will add a line item, entitled other contractual/shared, to separate the shared cost item and expand the write up to explain it. Mr. Adams noted other changes, including the addition of \$10,000 to legal foreclosure. These changes result in an assessment of \$1,137 per residential unit; a \$26 increase from the previous year. Discussion ensued and Mr. Adams noted general fund 002 should have a zero ending fund balance and he will make the change which will reduce the per unit assessment for 002 by about \$22, each.

Mr. Robertson summarized that the assessment for general fund 001 will be \$1,137.

In response to a question regarding the pump house coming online (Page 8), Mr. Adams indicated the pump house already came on line; he will update the description. Mr. Brougham asked if the security costs anticipate rates and costs at current hours and contract fee per hour rate. Mr. Adams replied affirmatively. Discussion ensued regarding security costs.

Mr. Curland asked if developer-owned units are included in the residential unit figures for CDD #2. Mr. Adams clarified it would be better to refer to these as on-roll and off-roll, as the developer could have on-roll assessments. Mr. Curland asked if there is a way to break the figures out by residents, developer on-roll and developer off-roll, to identify the potential liability. Mr. Adams suggested a breakout of on-roll – developer and on-roll – other.

On MOTION for Fiddler's Creek CDD #1 by Mr. Brougham and seconded by Mr. Curland, with all in favor, authorizing Staff to send mailed notices to notice a General Fund 001 operation and maintenance assessment not to exceed \$1,140, was approved.

FOURTEENTH ORDER OF BUSINESS

**Unaudited Financial Statements as of
June 30, 2010**

Mr. Adams presented the Unaudited Financial Statements as of June 30, 2010. Mr. Brougham noted access control is running at 83%. Mr. Adams indicated September was rolled into that figure, which is why it is exactly 8% over.

FIFTEENTH ORDER OF BUSINESS

**Audience
Requests**

Comments/Supervisors'

There being no Audience Comments or Supervisors' Requests, the next item followed.


SIXTEENTH ORDER OF BUSINESS

Adjournment: Fiddler's Creek CDD #1

There being no further business to discuss, all were in agreement with adjournment.

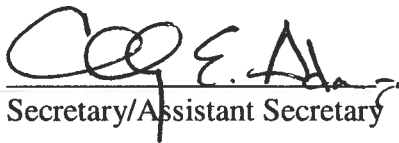
**On MOTION for Fiddler's Creek CDD #1 by Mr. Brougham
and seconded by Mr. Schutt, with all in favor, the meeting
adjourned at 10:40 a.m.**

Fiddler's Creek CDD #1


Secretary/Assistant Secretary


Chairman/Vice Chairman

Fiddler's Creek CDD #2


Secretary/Assistant Secretary


Chair/Vice Chair