

**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, August 25, 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 (via telephone)	Vice Chairman
Jim Schutt	Assistant Secretary
James Robertson	Assistant Secretary
Robert Slater	Assistant Secretary

For Fiddler's Creek CDD #2:

James Robertson	Chair
Victoria DiNardo	Assistant Secretary
Gretchen Scott	Assistant Secretary
Peggy Schmitt	Assistant Secretary

Also present were:

Chuck Adams	District Manager
Cleo Crismond	Operations Manager
Terry Cole	District Engineer
Tony Pires	District Counsel
Doug Gonzales (via telephone)	Special Counsel
Warren Bloom (via telephone)	Trustee Counsel
Paul Battista (via telephone)	Debtors Counsel
Hallie Alexander (via telephone)	Trustee Counsel
Tony DiNardo	Developer
Mike Charbonneau	Director Safety, Fiddler's Creek Foundation
Ron Albeit	GM, Fiddler's Creek Foundation
Al Love	Resident
Elliot Miller	Resident
Webb Gaskin	Resident
Jim Mayer	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 Supervisors Brougham, Robertson, Schutt and Slater were present, in person, for Fiddler's Creek CDD #1. Supervisor Curland was attending by telephone. Supervisors Robertson, DiNardo, Scott and Schmitt were present, in person, for Fiddler's Creek CDD #2. Supervisor Correia was not present.

JOINT MEETING ITEMS

SECOND ORDER OF BUSINESS

**Affidavit of Publication for August 25,
2010 Public Hearing and Regular
Meeting**

The Affidavit of Publication for today's Public Hearing and Regular Meeting was located behind Tab 2.

THIRD ORDER OF BUSINESS

**Update: Foreclosure Claim/Bankruptcy
Filing**

Mr. Gonzales indicated, since the last meeting, a hearing was held in August at which one (1) of the creditors, the bondholders, were challenging whether this is a single asset real estate matter. During the pendency of that action, two (2) arguments were asserted; 1) whether the bondholders, through the trustee, have standing in the bankruptcy case to assert this type of motion and 2) whether this particular bankruptcy falls within the single asset real estate provisions. Mr. Gonzales recalled, as voted upon and directed by the Boards at the last meeting, his office was to take no action or position regarding any motion or response that would be filed by the debtors, which was ultimately filed by the debtors. Mr. Gonzales indicated, when he came back from vacation the week of the hearing, he had new directives that CDD #2 desired that he file, what ultimately became, a limited joinder in the debtor's opposition that was filed. The limited joinder did not address the standing issue but they did join in the debtor's argument regarding this not being a single asset real estate case. The hearing occurred and, as directed, no one from his office attended that hearing and the court still has not ruled. Mr. Gonzales stated he spoke with Mr. Battista who indicated the court took it under advisement; he suspected an order

will be forthcoming relatively shortly. Mr. Gonzales indicated this is a status of where they are today.

Mr. Gonzales indicated a set of hearings are scheduled for September 2nd, in Tampa, which look to cover three (3) primary subjects. The first subject involves about five (5) proposed sales of properties for which he has reviewed the orders and is fine with the language; the language included will pay off all past due CDD sums, whether on or off-roll or a combination of on and off-roll. He indicated counsel has no objection to the sale of those properties going forward. The second item involves a motion by Mr. Pires' law firm to act as counsel and provide general real estate advice to the developers. The third motion, the most important for the Districts' purposes, is related to a motion for an additional interim period of financing. Mr. Gonzales indicated he has not yet seen the motion but it appears there will be at least one (1) more 13-week interim period to be considered by the court to be discussed at the September 2nd hearings.

Since no one has seen the next interim financing budget, Mr. Brougham asked Mr. Battista if he could advise the Boards of what will be included, vis-à-vis, CDD assessments, on and off-roll and covering shortfalls. Mr. Battista indicated the numbers have not been finalized but based on the draft budget he saw, his understanding is that they intend to continue doing what they did the last two (2) interim orders and budgets, which is to provide for, on an advance basis, the shortfalls for the O&M obligations and to pay the off-roll obligations. Mr. Battista summarized their intention to continue doing what they have done, make sure the two (2) CDD Boards get what they committed to, which is funding the shortfalls. Mr. Tony DiNardo confirmed the developer's intention to abide by the agreement they had in the last 13-week agreement to provide O&M on-roll and O&M off-roll.

Mr. Schutt asked from whom Mr. Gonzales received instruction to file the joinder relative to the single asset filing, since they voted to take no action. Mr. Schutt wanted to know how that came about. Mr. Gonzales indicated he cannot say how it came about other than when he returned from vacation the week of August 15th, there were emails asking if he could prepare that motion and have it filed before the Wednesday hearing. Mr. Gonzales indicated he immediately contacted Mr. Battista because he had not seen any response yet, in opposition to the motion; he reviewed it and prepared the motion the next day. Mr. Gonzales indicated what led up to that determination is better answered by Mr. Adams. Mr. Gonzales summarized when

he left the Friday of the week before, he had received an email from Mr. Adams reiterating the Boards' positions taken at the July meeting.

Mr. Adams recapped a timeline of events. He indicated both Boards voted unanimously, at the last meeting, to take no action with regard to the request. A few days following the meeting he saw an email from Mr. Battista inquiring of Mr. Gonzales what kind of action the Boards took. Mr. Gonzales provided to Mr. Battista that both Boards had voted unanimously not to take any action. A subsequent email from Mr. Battista was that he hoped the Boards would take action, rather than no action and consider joining their motion. Mr. Battista's email outlined some of the ramifications he thought could occur, to the extent that trustee's counsel was successful in their motion. Mr. Adams felt Mr. Battista's thought that the shortfall funding could be at risk raised the attention of CDD #2's Chair. Mr. Adams stated he felt this was important and reviewed it with the Chairs of both Districts. As CDD #2's Chair felt this was important enough to potentially reconsider, Mr. Adams indicated he moved forward with reviewing the facts with the other CDD #2 Board Members, consistent with the process that was outlined in the April meeting, when the question was asked about Staff's authority to act. He recalled the authority to take action on behalf of the CDDs in times when a meeting of the Board was not possible resided with Special Counsel, in consultation with the District Manager who, at the very least, would review issues of significance with the Chairs and, if the circumstances warranted, the Manager would review the issue individually with the remainder of the Board to aid Staff in its decision making, and those decisions would be ratified at the next meeting. Mr. Adams indicated this matter was happening quickly and, due to scheduling and advertising requirements, he elected to review these new facts with each of the Board Members individually and direct Mr. Gonzales, based on the outcome of that review. He recalled that the majority of the Board Members felt it was important to join in at least a partial joinder in the motion that this was not a single asset bankruptcy. Mr. Adams stated, from CDD #2's perspective, there was concern about the shortfall funding perhaps not being available as a result and CDD #2 is very reliant upon this, at this point.

Mr. Adams indicated the delegation of authority is ultimately with their attorney and, in consultation with the District Manager.

Mr. Slater raised the question of why there would be a shortfall in the funding and what that has to do with the single asset filing, which was never explained or discussed. Secondly, he

asked if either Board is allowed to change a vote and decision that was made on the record and make the change off the record. The Board Member asked if, since there was not a meeting and someone coordinated this, was there a Sunshine Law violation, as someone acted as a conduit between Board Members, when the members were not sitting together to discuss them. Mr. Adams indicated the outline he provided at the April meeting, which everyone agreed to, though not codified by motion, was that the delegation of authority rests with the Special Counsel, in consultation of the District Manager. On major items, such as this particular issue, wherein new facts and concerns were raised and there was validity to reconsidering the question, Special Counsel and Management would review that individually. Mr. Adams reiterated that, although the Boards' agreement was not codified through motions, there was enough discussion on the audio tape and in the summary minutes, from the April meeting, that everyone approved, that delegated that authority and process. Mr. Adams summarized that is the means that was used in this case and suggested, going forward, the Boards should memorialize the authority and process to follow, in the event an emergency meeting cannot be held.

Mr. Slater noted Mr. Adams referred to this as emergency information and that he said he spoke to Board Members. Mr. Slater indicated Mr. Adams did not speak to him and assumed Mr. Adams started with CDD #2. Mr. Slater felt the issue seemed like a blackmail attempt; you are not going to get funding, unless you agree. Mr. Adams indicated he and Mr. Gonzales had a discussion on how it would affect the shortfall funding and neither could come to terms on how it would, if it played out, with the possibility that, if they were successful with the motion, then the next step could be a "relief of stay", which may move the process forward quickly enough that the shortfall funding would no longer be available.

Mr. Adams reiterated he started with the Chairs of each District. He reported that Mr. Brougham's opinion was that this issue was not a "game-changer" and there was nothing there that made any major changes in the discussion or direction that the CDD #1 Board took at the July meeting. Mr. Adams felt that stance resides with the fact that CDD #1 is less reliant on the shortfall funding. Mr. Brougham indicated after his discussion with Mr. Adams, his bottom line was that CDD #1 had taken a vote; if they wanted to change it, they would have to call a special meeting and, since there was not time to do so, he felt the vote should stand.

Mr. Gonzales indicated Mr. Adams has accurately set forth their conversations regarding this matter. He confirmed this is not something that they want to happen very often. Given the

fact that CDD #2 wanted them to file a limited response, they went forward doing so, with the plan to ratify that action at today's meeting.

Mr. Slater asked if there was an actual revote by CDD #2. Mr. Adams indicated he reviewed the new facts and special counsel's recommendation with each CDD #2 Board Member, asking them to give him feedback regarding whether they felt this was important enough for them to rescind the prior motion and consider a partial joinder filing with regard to this not being a single asset bankruptcy and that foreclosure and lien rights were those of the Districts. Mr. Slater asked who actually made the final decision. Mr. Adams indicated he made the decision, based upon the review and majority feedback, in favor, from each CDD #2 Supervisor. Mr. Slater stated his opinion that Mr. Adams made a decision, without getting a yes or no vote from the CDD #2 Board Members and accused Mr. Adams of taking action counteracting the CDD #2 Board's vote at the last meeting. Mr. Adams reiterated that he reviewed the new facts with each CDD #2 Supervisor. Mr. Slater interjected telling Mr. Adams that he is in big trouble.

Mr. Gonzales indicated Mr. Adams obtained the opinion of the majority of Board #2 and could not take an official vote, outside of a public meeting, so Mr. Adams had to accumulate the information and determine how best to proceed and, in consultation with himself, they determined that they could ratify, if they were being directed to change CDD #2's approach, based on Mr. Adams' conversations with the Supervisors. Mr. Gonzales stated Mr. Adams was acting based on the communications and desires being told to him by the CDD #2 Board Members. The best course of action now is to ratify that action.

Mr. Robertson voiced his opinion that Mr. Slater is trying to make Mr. Adams the bad guy in this matter. Mr. Robertson felt Mr. Adams is not and there is no conspiracy. He recalled Mr. Gonzales did not disclose the significant downside issue regarding the shortfall to CDD #2, at the last meeting. Mr. Robertson indicated he received calls from CDD #2 residents the day after the meeting and called Mr. Adams regarding concerns for residents. Mr. Adams added that Mr. Robertson also called Mr. Gonzales' office, as well and spoke to Mr. Abbot, who was covering in Mr. Gonzales' absence. Mr. Adams stated it is difficult to say if he or Mr. Gonzales could have seen negative ramifications of not taking action at the last meeting. Mr. Adams felt it would have been helpful to have debtors' and trustees' counsel participating at the last meeting

to let the Districts know their positions. Mr. Adams indicated Mr. Gonzales did a good job of rendering his opinion and recommendation at the time of the meeting.

Ms. Scott indicated they are not looking for a bad guy, they are just realizing that CDD #2 has substantial exposure and they were operating on a abundance of caution, in order to minimize any bad ramifications.

Mr. Schutt noted Mr. Gonzales is being accused of not disclosing all of the information and asked him if he knew of this and whether anyone had advised him of this information. Mr. Gonzales replied no, he responded to questions at the last meeting, with both Boards present, and gave an overview of the status of the various filings, at that time. Mr. Gonzales confirmed he did not know of or did not think of any additional information to provide to either Board; otherwise, he would have disclosed it during that meeting, for the benefit of both Boards, had he known anything additional.

On behalf of the trustee and with all due respect to Mr. Gonzales and Mr. Adams, Mr. Bloom, stated he has concerns about the Sunshine Law. Mr. Bloom indicated the original action was taken at an open meeting and the decision was changed outside of the Sunshine Law and action taken in the form of the filing in court; thus, if anyone wanted to give input, there was no opportunity. Mr. Bloom stated, while he understands the process of ratification, it does not change the fact that no one was able to have input prior to the decision.

As District Counsel, Mr. Pires was asked for his opinion on the Sunshine Law issue. Mr. Pires indicated he has not been involved with the bankruptcy issues. Mr. Pires stated, understanding the facts, as he has heard them today, an issue could be raised and asserted that there was action taken contrary to the Sunshine Law, as indicated by Mr. Bloom. Mr. Pires indicated, as Mr. Gonzales stated, the appropriate action, if there is an assertion that there was a violation of Sunshine Law, is to have a full and open discussion and debate to discuss the actions that were taken, if it is to be ratified or confirmed, in order to avoid any party asserting a violation that would void the action. Mr. Gonzales confirmed his agreement with Mr. Pires' opinion adding he feels the Boards are currently engaging in the full and open discussion and debate.

Mr. Brougham commented that neither Board had knowledge, nor foresight, of the response by the debtors to the bondholders' position at the time of the last meeting, so the action that CDD #1 took was based solely on the motion filed by bondholders' counsel in early July.

Speaking on behalf of CDD #2, Mr. Robertson indicated they had no prior notification, before the July 28th meeting of the significant nature of the single asset real estate motion. He indicated it was brought to their attention verbally, over the phone. Mr. Robertson felt CDD #2's Board did not receive very good counsel on the issue at the time of the meeting. He referred to the Rules of Procedure and felt the CDD #2 Supervisors followed those procedures and indicated the rules state it must be ratified, which is what is trying to be accomplished here.

Mr. Love asked Mr. Robertson who gave him the information. Mr. Robertson indicated he received a telephone call from a resident from CDD #2. Mr. Robertson asked Mr. Elliot Miller to speak.

Mr. Miller indicated, when it came to his attention that this issue evolved, he became concerned. Mr. Miller stated, just on the merits of whether this is a single asset real estate entity, it seemed charitable that the position was highly questionable, if not entirely spurious. Mr. Miller said he was concerned that the Board of CDD #2 would not take an aggressive position to point out to the court how spurious the position was. He stated he knows the consequences of a determination that a company is a single asset real estate entity can be material, serious and highly detrimental to the homeowners of CDD #2. For example, if there is a determination, within 30 days, if there is no plan filed and interest is not paid, the automatic stay is lifted, which is not good for CDD #2, as it would clearly result in termination of all money coming in to CDD #2 to fund shortfalls. Mr. Miller felt this is such a serious consequence and the position taken by the bondholders is so entirely spurious, he presented those points to Mr. Robertson and voiced his concern. Mr. Miller stated he felt the positions of CDD #1 and #2 were entirely disparate, as CDD #2 has a dependency on the developer which CDD #1 does not. CDD #2 is dependant on the shortfall payments, as it does not have the large reserves that CDD #1 has. Mr. Miller felt the time has come for both CDDs to separate, no longer hold joint meetings and for CDD #2 to hire its own counsel.

Mr. Schutt asked Mr. Bloom if he would comment on the spuriousness of his assertion. Mr. Bloom said he would wait for the judge to decide on September 2nd.

On MOTION for Fiddler's Creek CDD #2 by Mr. Robertson and seconded by Ms. DiNardo, with all in favor, the partial joinder filing, with the debtor, in the August single asset real estate hearing, was ratified.

FOURTH ORDER OF BUSINESS

**Clarification: Delegation of Decision
Making Authority**

Mr. Adams asked the Boards to consider motions regarding delegation of authority to Special Counsel and the District Manager, in review with their Chairs and, as circumstances allow, with the remainder of the Boards, outside of public meetings, on emergency items, pertaining specifically to the bankruptcy foreclosure.

On MOTION for Fiddler's Creek CDD #1 by Mr. Brougham and seconded by Mr. Curland, with Mr. Schutt and Mr. Slater in favor and Mr. Robertson dissenting, delegating authority to special counsel and the District Manger, only to file responses, motions, joinders or any other legality, in the bankruptcy or foreclosure proceedings, subject to majority vote of CDD #1's Board Members and, should actions be needed outside of a public meeting, the Chairman will call a special meeting for consideration of that action, was approved. (Motion passed 4-1)

On MOTION for Fiddler's Creek CDD #2 by Mr. Robertson and seconded by Ms. DiNardo, with all in favor, due to the fast moving nature of some issues, if an issue arises with a short timeframe, action may be taken outside of the hearing for the Chairman to give advice to the District Manager to negotiate with special counsel as to the way and direction the CDD #2 Board desires special counsel to take, action taken outside of a public meeting will be subsequently ratified at the next regularly held public meeting, was approved.

Mr. Webb Gaskin, a resident, found the issue of an emergency troubling. He stated there was a public hearing, all parties had an opportunity to give input but some did not and he felt the Boards are interpreting their silence as an emergency but it is not, just because all parties were not heard. He cautioned the problem of allowing everyone to call the Chair, tell him they do not like a certain vote and then allow the Boards to change their direction based on that does not really constitute an emergency.

Mr. Miller indicated he did not attend the July meeting because he was on vacation; however, had he been there, he would have said something.

A resident asked what the emergency was. Mr. Robertson recapped the sequence of events leading to the action. Ms. DiNardo clarified the emergency was the upcoming hearing. The resident asked why counsel did not file a motion to continue the hearing. Mr. Gonzales indicated he could have filed a motion but does not feel the court would have granted it, based on the CDD's request for continuance.

Mr. Mayer, a resident, felt the Board did not have all of the necessary information at the time of the July meeting. He thanked Mr. Miller for bringing this up, so as to help prevent CDD #2 from being adversely affected.

On MOTION for Fiddler's Creek CDD #1 by Mr. Brougham and seconded by Mr. Slater, with all in favor, any changes to previous Board action shall only occur within a meeting of the Board.

On MOTION for Fiddler's Creek CDD #2 by Mr. Robertson and seconded by Ms. DiNardo, with all in favor, delegating authority to special counsel, in consultation with the District Manager and the Chair, to change previous Board action outside of a meeting, in the event of an emergency, changing facts or circumstances, if a special meeting cannot be held and to ratify said action at the next available meeting of the Board, was approved.

FIFTH ORDER OF BUSINESS

Discussion/Consideration: Letter to Trustee

- **Authorize District Manager to Transmit to Trustee**
- **Authorize Engagement of Bond Counsel**

Mr. Adams indicated Management has reviewed some of the activities with regard to movement of funds out of construction and debt service reserve accounts. In one (1) instance involving CDD #1, they noted an instance of movement of funds out of the construction account, by the trustee, to address non construction which may be defined as a private use of funds and as a result may exceed IRS 10% threshold, for private use of funds. In this particular case, it has come to Management's attention that foreclosure, bankruptcy, debt service and optional redemption expenses appear to be the reasons for the withdrawals that cumulatively are

exceeding the 10% threshold in the Series 2005 accounts. Mr. Adams indicated the letter asks trustee's counsel to provide response to our concerns.

Mr. Adams indicated they are also seeking a response from trustee and trustee's counsel, regarding under what authority they were able to move those funds without the Boards' approval.

Mr. Adams noted the importance of this matter and Management's recommendation that the Districts move towards engaging bond counsel to review the situation and provide opinions and advise regarding the issues.

In response to Mr. Brougham's question, Mr. Adams stated if it is determined that more than 10% of the bond proceeds were used in a private nature, they could potentially lose the tax-exempt status and they become taxable. Mr. Pires agreed with the recommendation to hire bond counsel. Discussion took place regarding who is at risk, should the bonds lose their tax exempt status. Mr. Pires stated, in this case, it appears none of the actions were taken by the Districts, they were taken by the bondholders; thus, it appears they are the parties that would pay the enhancement.

Mr. Brougham asked by what authority did the bondholders move money, not approved by the Board, and what action can the Boards take to remedy the situation. Mr. Adams indicated first they want an opinion/advise regarding the tax-exempt status of the bonds still being intact, where they may have exceeded the 10% threshold on expenses that could potentially be defined as private use expenses. The second question asks trustee's counsel to give their opinion on what authority this was done.

Ms. Scott questioned the value of seeking trustee's counsel's opinion and felt the Districts need their own bond counsel or an advance IRS ruling to let them know the status of the bonds. Mr. Adams indicated the letter places a notice of concern with them, from the Districts. Mr. Adams agreed they should engage bond counsel.

Mr. Miller, a resident, asked if anyone gave an opinion of counsel for the release of the funds. Mr. Pires replied he did not. Mr. Adams noted these occurred outside of the normal draw requests process; the CDDs did not see these occur until after the fact. Mr. Miller stated he foresees serious consequences for everyone such as claims of lack of adequate supervision, claims from the developer, bondholders and etc. Mr. Miller suggested each District should have its own bond counsel and act separately.

Mr. DiNardo asked why new bond counsel was not engaged when Greenberg Traurig resigned as bond counsel but remained as trustee's counsel for CDD #1. Mr. Adams explained they did not technically resign because the District never engaged them. Greenberg Traurig's engagement was contingent on a waiver of conflict and the conditions of that waiver were not acceptable to the Districts.

Ms. Scott asked what else the trustees have taken out of the construction account, other than principal and interest payments. Mr. Adams indicated the funds have been used for foreclosure/bankruptcy expenses.

Mr. DiNardo asked if CDD #1 knows how much money was taken out and to whom it was paid. The Board consensus was that they do not know the amount or who was paid.

A Board Member asked if there is a potential liability against the Supervisors of CDD #1. Mr. Pires felt there is not; the Board took action, as soon as the matter came to their attention.

Ms. DiNardo asked if the Districts have recourse against trustee's counsel because they did something out of the ordinary and did not advise the Districts. Mr. Pires explained Management is advising them to engage bond counsel to determine if they need to make any demands upon the trustee and/or bondholders. Mr. Adams indicated Management's belief that the current letter is appropriately written and asks the correct questions; regardless of whether an answer is received, it puts the trustee and trustee's counsel on notice of the Districts' concerns.

The Boards asked that Mr. Pires be involved in redrafting the letter making it more strongly worded or firmer in tone. Mr. Adams indicated Management will work with Mr. Pires.

Mr. Bloom was asked but had no comment.

On MOTION for Fiddler's Creek CDD #1 by Mr. Slater and seconded by Mr. Schutt, with all in favor, authorizing the District Manager to work with District Counsel to revise the letter and transmit the letter, in its revised format, to the trustee, was approved.

On MOTION for Fiddler's Creek CDD #2 by Ms. Scott and seconded by Ms. DiNardo, with all in favor, authorizing the District Manager to work with District Counsel to revise the letter and transmit the letter, in its revised format, to the trustee, was approved.

Mr. Brougham asked the cost and if the District's could realistically find bond counsel who was not somehow already involved. Mr. Adams felt bond counsel could be found and the cost would likely be an hourly rate, estimating \$300 - \$400 per hour. Mr. Brougham asked if this would be an ongoing situation. Mr. Adams indicated they would be engaged at will, as issues come up. Mr. Brougham asked the advantages or disadvantages of the Districts engaging separate bond counsel. Each Board preferred to engage separate bond counsel.

On MOTION for Fiddler's Creek CDD #1 by Mr. Brougham and seconded by Mr. Slater, with all in favor, authorizing the District Manager to work in conjunction with the Chairman to engage bond counsel, separate from CDD #2, was approved.

On MOTION for Fiddler's Creek CDD #2 by Ms. Scott and seconded by Ms. DiNardo, with all in favor, authorizing the District Manager to work in conjunction with the Chair to engage bond counsel, separate from CDD #1, was approved.

Mr. DiNardo asked if money is still going to be taken out of the funds at US Bank. Mr. Adams indicated he does not know and Management is not generally alerted; rather, they find out when the monthly statements arrive. Mr. Brougham asked if the Districts can impose their will. Mr. Pires stated the correspondence addresses that. In response to discussion, Mr. Adams confirmed the Districts do not have the authority or ability to control the trustees so, if they continue to operate in that manner, the Districts have put their concerns on the record by way of the letter. Mr. Adams reiterated that the transactions in question have occurred outside of the normal course. Mr. Pires summarized there was no notice to Management or the Boards that the requests for disbursements, transfers or withdrawals were made and there was no immediate notification once they took place. Mr. Adams confirmed the District Treasurer, Mr. Wrathell, was left out of the process, with regard to these transactions.

Mr. Miller, a resident, asked how and by whom this was uncovered. He asked whether auditors review this on a regular basis and why they did not discover it. Mr. Adams indicated this was discovered during this fiscal year, which has not yet been audited. Mr. Adams indicated it was discovered by Management upon review of the bank statements.

Discussion ensued regarding previous bond counsel.

*****Mr. Gonzales left the meeting.*****

Ms. Schmitt asked when this was discovered. Mr. Adams indicated it was within the last couple of months.

▪ **Staff Report – Engineer**

*****This item, previously Item 11b., was presented out of order.*****

For Fiddler's Creek CDD #1, Mr. Cole indicated installation of the jersey barriers at the end of Club Center Boulevard is complete, except that the reflector signs need to be installed and the temporary barriers removed. The backflow assembly in front of the clubhouse was moved, is being relocated and they are completing the cleanup.

Mr. Cole presented Draw 49, for the 2005 Series bond, for approximately \$26,000, for the Championship Drive sidewalk connections, design fees related to street lighting to be added at the Fiddler's Creek Parkway and 951 entrance, county canal restoration work at the end of Club Center Boulevard and periodic treatment of the Belle Meade Preserve exotics.

Mr. Brougham asked Mr. Pires for the status of his research on the Belle Meade Preserve. Mr. Pires indicated the research is not complete but there is a conservation easement that was imposed on that area by virtue of conditions and under an Army Corps of Engineers permit. Mr. Pires indicated the South Florida Water Management District (SFWMD) permit associated to restoration of the Belle Meade Preserve only addresses use of the preserve as part of the overall water management system. Mr. Pires indicated Belle Meade Preserve serves two (2) functions; the first is the environmental preservation aspect being that it be restored to its prior condition, with the removal of the exotics and maintain the native vegetation. The other is the water management system functioning aspect; under the SFWMD permit. Mr. Pires indicated it could take years for there to be an environmental impact, to the extent that there is any degradation in the environmental restoration and the impact on water quality and the water management system. The District needs to operate it as part of its water management system and, whether or not it needs to or is required address it from an environmental enhancement aspect remains questionable.

A Board Member asked how the District is impacted by a lawsuit between the conservancy and the State of Florida. Mr. Pires noted that involves a different area.

For Fiddler's Creek CDD #2, Mr. Cole indicated he is continuing his efforts to coordinate the funding for the FPL performance guarantee requirements.

Regarding the lake erosion issue, Mr. Cole reported he provided correspondence to Ms. Hallie Alexander, bondholders' representative, and indicated the District is proposing to use a portion of the construction funds for repair of the lake erosion located in CDD #2. Mr. Cole indicated Ms. Alexander asked for an opinion regarding the maintenance responsibilities and Mr. Pires will respond to the inquiry. Mr. Pires indicated his opinion is that the District has the maintenance responsibility because those were dedicated as easements as part of the water management system. Mr. Cole indicated the hope is Ms. Alexander's agreement that capital funds can be used for repair of a CDD asset.

Mr. Cole presented Draw 66, for the 2003 Series bond, for approximately \$3,000 for work primarily related to the lake erosion issue. Draw #57, for the 2005 Series bond, for approximately \$411,000 related to deposits for the FPL performance guarantee requirements.

SIXTH ORDER OF BUSINESS

**Public Hearing to Consider Resolutions
Adopting the Final Budget(s) for Fiscal
Year 2011, Pursuant to Florida Law**

Mr. Adams presented Resolutions 2010-8 and 2010-9, along with their corresponding budgets. He noted the budgets are in the form left at the last meeting with the inclusion of the single major adjustment made at the meeting which was the cost sharing on Belle Meade Preserve. Mr. Adams recapped that the cost sharing was split based on the number of units in each District.

Mr. Brougham asked if they are adopting the budget by adopting the resolution. Mr. Adams indicated adoption of the resolution effectuates the adoption of the budget.

Mr. Brougham asked what is included in the access control rentals and leases line item. Mr. Adams indicated it includes the rental and lease of the car, trailer and port-o-potty. Mr. Brougham asked why the amount decreased from last fiscal year. Mr. Adams indicated the financing related to the upgrade completed several years ago is maturing out during the year. Mr. Brougham asked the actual assessment amount and the cap amount that was noticed. Mr. Adams indicated the actual amount will be \$1,137 per unit and the cap amount was \$1,140. Mr. Brougham explained CDD #2 did not receive the notice because their assessment amounts were not increasing. Mr. Adams explained the notice is sent only when the assessment will exceed the previously noticed cap amount.

A Board Member referred to a letter sent to him by Mr. Love and asked about the roving patrol during the daytime. Mr. Love had suggested eliminating the daytime roving patrol to save \$5,840 per year. The Board Member voiced his support for elimination of the roving patrol. Mr. Brougham reminded the Boards that this type of item must be decided in conjunction with CDD #2 and can be part of the discussion at the upcoming workshop. Mr. Robertson indicated residents of CDD #2 are in favor of keeping the roving patrol.

- **Resolution 2010-8, Fiddler's Creek Community Development District #1**

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

Mr. Love indicated the purpose of his letter was to ask the Board to look at how they are spending money.

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

On MOTION for Fiddler's Creek CDD #1 by Mr. Schutt and seconded by Mr. Slater, with all in favor, Resolution 2010-8, Adopting the Final Budget for Fiscal Year 2011, Pursuant to Florida Law, was adopted.

- **Resolution 2010-9, Fiddler's Creek Community Development District #2**

In response to Mr. Robertson's question, Mr. Adams confirmed the adoption of Resolution 2010-9 will act to adopt the budget today.

Ms. Scott asked about the budgeted street lighting line item amount compared to last fiscal year's budget and the financials. Mr. Adams indicated an additional section of street lights were brought on that was previously paid by an association. The association was reimbursed for back billing and the budget has been adjusted to take over the costs, going forward.

Mr. Robertson noted CDD #2 asked for the addition of a \$10,000 legal fees line item related to foreclosure legal counsel. Mr. Adams indicated it is included on Page 1.

*****Mr. Adams opened the Public Hearing.*****

Mr. Miller asked why the currently proposed budget is 25% higher than last fiscal year. Mr. Adams indicated he is only looking at the on-roll assessments, there is proposed movement of assessments from off-roll to on-roll. Ms. Scott asked which parcels that encompasses. Mr. Adams indicated Management and the Collection Agent were asked to look at the ability to move off-roll assessments, currently owned by the developer entities in the 2004 and 2003 Series

areas, from off-roll direct billing to on-roll tax billing. Management's reading of the trust indentures and nonlegal opinion is that the Series 2004 appears to allow for that but Series 2003 does not. Mr. Adams indicated the budget presented was prepared anticipating that the Series 2004 budget will move these units from off-roll to on-roll.

Ms. Alexander asked why the 2004 assessments are being put on the tax roll. Mr. Adams indicated the landowner asked for a review and Management's nonlegal opinion was that it could be done for the 2004 Series. Mr. Adams asked Ms. Alexander for her legal opinion and any adverse affects she may see related to the current bankruptcy case. Ms. Alexander indicated the trustee, on behalf of the bondholders, wishes to leave the assessments off-roll and does not see the benefit in putting them on-roll, in light of the status of the developer. Ms. Alexander indicated they do not see how the District benefits by putting them on-roll, given that the debt assessments are used solely to pay debt service on the bonds. Ms. Alexander requested that they be direct billed as in the past. Mr. Adams requested Ms. Alexander's opinion of any complications in the court case, in the fact that these were originally billed off-roll and are now going on-roll. Ms. Alexander indicated several factors play into it but the bondholders want them to remain off-roll.

Mr. Adams explained that the master trust indenture dictates that the District use the best means possible in its legal collection of the assessments. The supplemental trust indentures provide more detail and that is where the discrepancy arises between the two (2). Mr. Adams explained the status of the District and possible scenarios regarding off and on-roll assessments, as related to the bankruptcy. Mr. Adams confirmed that, on the surface, Mr. Gonzales did not see any issues with this approach. Ms. Alexander asked how the District benefits, since unpaid, on-roll assessments could not be sold in a tax certificate sale due to the bankruptcy; this removes any remedies, in light of the bankruptcy. Mr. Adams indicated he felt this is neutral, from the District's perspective, as they currently have continued court orders for the debtor to continue making operating off-roll payments and fund shortfalls. When the bankruptcy is over, delinquent taxes could be paid or sold. Ms. Alexander questioned Mr. Adams' statement of it being neutral for the District. Mr. Adams reiterated his previous comments.

In response to Ms. Scott's question, Mr. Adams indicated these would be on the tax bills going out in early November of this year, for the 2011 tax year, beginning October 1st.

Mr. Adams confirmed the budget presented today reflects the 2004 Series bond assessments, currently held in the developer's possession, moving from off-roll to on-roll.

*****Mr. Adams closed the Public Hearing.*****

On MOTION for Fiddler's Creek CDD #2 by Mr. Robertson and seconded by Ms. DiNardo, with all in favor, Resolution 2010-9, Adopting the Final Budget for Fiscal Year 2011, Pursuant to Florida Law, was adopted.

SEVENTH ORDER OF BUSINESS

Consideration of Resolutions Levying a Non Ad Valorem Maintenance Assessment for the General Funds and a Non Ad Valorem Assessment for the Debt Service Fund for Fiscal Year 2011

Mr. Adams indicated these are the resolutions that will levy the assessments consistent with the budgets just adopted, authorize certifying of the roll and authorize Staff to transmit to the tax collector for placement of the on-roll assessments on the property tax bill and outlines as schedule of payment for the off-roll assessments, pertaining specifically to the O&M side. Mr. Adams indicated the off-roll assessment payment schedule is consistent with the schedule approved last year. Mr. Pires suggested changing "Chapter 190.021(3)" to "Chapter 190.021", throughout both resolutions. The Boards agreed.

- **Resolution 2010-9, *Fiddler's Creek Community Development District #1***

On MOTION for Fiddler's Creek CDD #1 by Mr. Brougham and seconded by Mr. Slater, with all in favor, Resolution 2010-9, Levying a Non Ad Valorem Maintenance Assessment for the General Funds and a Non Ad Valorem Assessment for the Debt Service Fund for Fiscal Year 2011, as amended, was adopted.

- **Resolution 2010-10, *Fiddler's Creek Community Development District #2***

Mr. Pires noted a correction to CDD #2's resolution changing "*principle*" to "*principal*".

On MOTION for Fiddler's Creek CDD #2 by Mr. Robertson and seconded by Ms. DiNardo, with all in favor, Resolution 2010-10, Levying a Non Ad Valorem Maintenance Assessment for the General Funds and a Non Ad Valorem Assessment for the Debt Service Fund for Fiscal Year 2011, as amended, was adopted.

EIGHTH ORDER OF BUSINESS

Consideration of Revised Incident Report Procedures

Mr. Brougham indicated these procedures are presented for approval and for insertion into the post orders. He stated this was prepared after the incidents of trespassing.

On MOTION for Fiddler's Creek CDD #1 by Mr. Schutt and seconded by Mr. Slater, with all in favor, the addition of the Revised Incident Report Procedures, as presented, to the Post Orders, was approved.

On MOTION for Fiddler's Creek CDD #2 by Mr. Robertson and seconded by Ms. DiNardo, with all in favor, the addition of the Revised Incident Report Procedures, as presented, to the Post Orders, was approved.

NINTH ORDER OF BUSINESS

**Approval of Minutes of July 28, 2010
Joint Public Hearing and Regular
Meeting**

Mr. Brougham presented the July 28, 2010 Joint Public Hearing and 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 56: Change "Calista" to "Callista"
- Line 65: Insert "real estate" after "asset"
- Line 66: Insert ", and, if so," after "property"
- Line 92: Change "to delay" to "speed up"
- Line 153: Change "Cole" to "Pires"
- Line 232: Change "bondholders" to "developer" and change "want" to "wants"
- Line 248: Insert "could" after "Districts"
- Line 248: Insert "at any hearings establishing new CDDs" after "appear"
- Line 249: Change "be included" to "contribute"

On MOTION for Fiddler's Creek CDD #1 by Mr. Slater and seconded by Mr. Schutt, with all in favor, the July 28, 2010 Joint Public Hearing and Regular Meeting Minutes, as amended, were approved.

On MOTION for Fiddler's Creek CDD #2 by Ms. Scott and seconded by Ms. DiNardo, with all in favor, the July 28, 2010 Joint Public Hearing and Regular Meeting Minutes, as amended, were approved.

TENTH ORDER OF BUSINESS

Other Business

Mr. Brougham asked Management to research a new website provider to serve both Districts. Mr. Brougham suggested the firms desiring to be successful should agree to transfer all data, historical and otherwise, from the current websites, at reasonable charges, to the new website.

On MOTION for Fiddler's Creek CDD #1 by Mr. Brougham and seconded by Mr. Schutt, with all in favor, authorization of Staff to proceed with seeking a new website provider and provide a recommendation to the Board, was approved.

On MOTION for Fiddler's Creek CDD #2 by Mr. Robertson and seconded by Ms. DiNardo, with all in favor, authorization of Staff to proceed with seeking a new website provider and provide a recommendation to the Board, was approved.

Mr. Adams distributed the interlocal agreement which was revised by Mr. Pires, based upon the Boards' actions, at the last meeting, which is to modify to include the Belle Meade Preserve area, the cost sharing scenario and update the dates.

On MOTION for Fiddler's Creek CDD #1 by Mr. Brougham and seconded by Mr. Slater, Mr. Curland and Mr. Robertson in favor and Mr. Schutt dissenting, adoption of the Second Amended and Restated Interlocal Agreement, modified to include the Belle Meade Preserve and cost sharing, was approved. (Motion passed 4-1)

On MOTION for Fiddler's Creek CDD #2 by Mr. Robertson and seconded by Ms. DiNardo, with all in favor, adoption of the Second Amended and Restated Interlocal Agreement, modified to include the Belle Meade Preserve and cost sharing, was approved.

Mr. Adams suggested the Boards consider only addressing security, at the upcoming joint workshop and asked for possible dates.

On MOTION for Fiddler's Creek CDD #1 by Mr. Brougham and seconded by Mr. Schutt, with all in favor, directing Staff to advertise a joint workshop, related to access control services, for September 21, 2010 at 1:00 p.m., at this location, was approved.

On MOTION for Fiddler's Creek CDD #2 by Mr. Robertson and seconded by Ms. DiNardo, with all in favor, directing Staff to advertise a joint workshop, related to access control services, for September 21, 2010 at 1:00 p.m., at this location, was approved.

Mr. Brougham stressed the need to inform the residents of the workshop and will prepare a notice to be sent by eblast.

ELEVENTH ORDER OF BUSINESS

Staff Reports

a. Attorney

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

b. Engineer

This item was discussed during the Fifth Order of Business.

c. Manager

****This item was addressed after Item d.****

i. Fiscal Year 2011 Proposed Joint Meeting Schedule

Mr. Adams presented the proposed Joint Meeting Schedule for consideration. It was noted the December meeting is scheduled one (1) week before the Christmas holiday; rather than two (2) weeks prior.

Discussion ensued regarding whether the Boards wished to continue meeting jointly. The Boards deferred decision to their individual portion of the meeting.

ii. NEXT MEETING DATE: September 22, 2010 at 8:00 A.M.

Mr. Adams stated the next meeting is scheduled for September 22, 2010.

d. Operations Manager

****This item was addressed prior to Item c.****

Ms. Crismond presented the Operations Manager report indicating they are trying to obtain the fence panels for replacements, as the original manufacturer went out of business. The next lake maintenance tour will be in September. Ms. Crismond indicated she noticed more lilies, notified LakeMasters and they are treating it on a weekly basis. She continues to tour with TruGreen and there have been some issues with chinch bugs; they recently changed chemicals and are starting to see improvements. TruGreen uses a subcontractor to apply the chemicals. Patrol services for July and August were included in Ms. Crismond's report.

Mr. Brougham spoke personally of the effectiveness of the patrol services in monitoring of speeding and stop sign violations.

It was noted that the streetlights on Fiddler's Creek Parkway have been out for several days or weeks. Ms. Crismond indicated she received a notice last week that they were off and this week she received a notice that they were on. Bentley is scheduled to be here today.

FIDDLER'S CREEK CDD #1 ITEMS

- **Fiscal Year 2011 Proposed Joint Meeting Schedule**

On MOTION for Fiddler's Creek CDD #1 by Mr. Brougham and seconded by Mr. Schutt, with all in favor, the Fiscal Year 2011 Proposed Joint Meeting Schedule, as presented and corrected, was approved.

TWELFTH ORDER OF BUSINESS

**Unaudited Financial Statements as of
July 31, 2010**

Mr. Adams presented the Unaudited Financial Statements as of July 31, 2010.

THIRTEENTH ORDER OF BUSINESS

**Audience
Requests**

Comments/Supervisors'

Mr. DiNardo asked how much money was taken out of the bonds. Mr. Brougham indicated it is reflected in the financials. Mr. Adams referred to the construction fund, transfers out, year-to-date line item, on Page 11 of the CDD #1 unaudited financials; Page 9 indicates where the money went. The Board asked for Management to determine the date and times of the transfers and to whom the \$4 million went to.

FOURTEENTH 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. Slater, with all in favor, the meeting adjourned.

FIDDLER'S CREEK CDD #2 ITEMS

▪ **Fiscal Year 2011 Proposed Joint Meeting Schedule**

Mr. Robertson acknowledged the benefit of joint meetings but voiced CDD #2's concerns that their interests are being trampled in a rush to get through the meeting. Mr. Robertson felt CDD #2 may wish to reconsider joint meetings. Mr. Adams suggested, if such an instance seems apparent, CDD #2 should request to move that item to their specific portion of the agenda. Mr. Adams confirmed each meeting has a separate section for each CDD and they can move an item if desired; additionally, the CDD can continue their portion of the meeting to another date and time, in order to have their discussion separate and distinct from the other CDD.

Mr. Miller indicated his desire for separate meetings as he feels the CDDs' interests are so different and the CDD loses all attorney/client confidentiality by participating in the joint meeting. Mr. Adams clarified that the only way for attorney/client discussion to remain confidential, and off the record, is to meet in executive session, which is an option for the Board, regardless of whether they have individual or joint meetings. Mr. Pires clarified they can meet in executive session in matters related to pending litigation, which bankruptcy does meet that criteria.

Mr. Adams recommended CDD #2 agree to continue meeting jointly, while reserving the right to meet separately on items of specific interest that they feel they do not want to discuss jointly or are not comfortable discussing as part of their specific portion of the agenda that is part of a joint meeting.

Mr. DiNardo suggested that residents are attending the joint meetings and influencing or challenging Board Members from the District in which they do not reside and he feels that is wrong. Mr. DiNardo suggested that separate meetings would alleviate that problem as residents would only come to their District's meeting. Mr. Pires stated for the record that all District meetings, either jointly or individually, are public meetings and anyone from the public can attend and speak, regardless of which District they are from.

Discussion continued regarding the situation and each Board's feelings about joint meetings, resident input and whether meeting jointly will be efficient, once each District has individual special, bond and bankruptcy counsel.

Mr. Schutt questioned Mr. Robertson's ability to adequately serve on both Boards and called for him to resign from one (1) of the Boards.

On MOTION for Fiddler's Creek CDD #2 by Mr. Robertson and seconded by Ms. DiNardo, with all in favor, the Fiscal Year 2011 Proposed Joint Meeting Schedule, as presented and corrected, was approved.

Mr. Robertson reiterated his earlier concern that Mr. Gonzales did not adequately represent CDD #2's interests in the foreclosure matter. He suggested CDD #2 engage separate foreclosure counsel. Mr. Robertson indicated he interviewed Mr. Robert DeMarco, of Treiser Collins, to represent CDD #2. Mr. Demarco indicated he had no known conflicts in the matter. Mr. Robertson indicated Mr. DeMarco's hourly rate is \$312 with a \$10,000 retainer. Mr. Robertson indicated the developer is willing to pay this cost for the remainder of the current fiscal year. Mr. Pires stressed the importance to advise Mr. DeMarco of the source of funding, at the present time, to assist him in understanding the relationships. Mr. DiNardo indicated this would be part of the O&M expenditures that the developer has agreed to advance off-roll. Mr. DiNardo clarified he is giving the District money as O&M expenditures; he is not paying Mr. DeMarco's bill. Mr. Pires reiterated his opinion on the importance of Mr. DeMarco to understand the source of funding that would help pay his bill. Mr. Adams confirmed he will discuss this with Mr. DeMarco to ensure his understanding, request a form of engagement letter, review it with the Chair and engage him.

Mr. Elliott spoke of Mr. DeMarco's experience, credibility and competence.

On MOTION for Fiddler's Creek CDD #2 by Mr. Robertson and seconded by Ms. DiNardo, with all in favor, authorizing the District Manager and Chair to negotiate a retainer agreement with Treiser Collins to serve as bankruptcy counsel for CDD #2, engage Treiser Collins and, upon execution of the agreement, authorize the termination of Weiss Serota, was approved.

FIFTEENTH ORDER OF BUSINESS

**Unaudited Financial Statements as of
July 31, 2010**

Mr. Adams presented the Unaudited Financial Statements as of July 31, 2010.

SIXTEENTH ORDER OF BUSINESS

**Audience
Requests**

Comments/Supervisors'

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

SEVENTEENTH ORDER OF BUSINESS

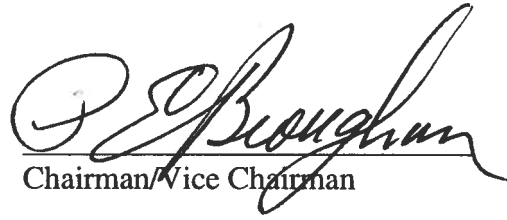
Adjournment: Fiddler's Creek CDD #2

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

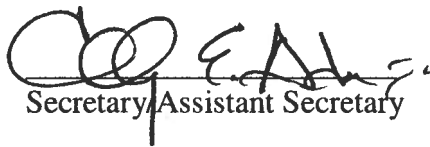
**On MOTION for Fiddler's Creek CDD #2 by Ms. DiNardo
and seconded by Ms. Scott, with all in favor, the meeting
adjourned at 11:15 a.m.**

Fiddler's Creek CDD #1


Secretary/Assistant Secretary


Chairman/Vice Chairman

Fiddler's Creek CDD #2


Secretary/Assistant Secretary


Chair/Vice Chair