

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

A Joint 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, April 27, 2011 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 | Chair               |
| Jim Curland      | Vice Chair          |
| Jim Schutt       | Assistant Secretary |
| Gerald Bergmoser | 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                        |
| Cleo Crismond                          | Operations Manager                      |
| Terry Cole                             | District Engineer                       |
| Tony Pires                             | District Counsel                        |
| Michelle Blackstock (via telephone)    | Grau & Associates                       |
| Aleida Martinez Molina (via telephone) | Weiss Serota, CDD #1 Special Counsel    |
| Robert DeMarco (via telephone)         | Treiser Collins, CDD #2 Special Counsel |
| Tony DiNardo                           | Gulf Bay, Developer                     |
| Andrew Sanford                         | ITG Holdings, LLC                       |
| Tom Messana (via telephone)            | Bondholder Counsel                      |
| Keith Fender                           | US Bank                                 |
| John Hutton                            | Trustee Counsel, Representing US Bank   |
| Mary Ann Murphy                        | Resident-Whisper Trace                  |

**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 were present, in person, for both CDD #1 and CDD #2.

**SECOND ORDER OF BUSINESS**

**Discussion: Corrections/Additions to the Agenda**

- **Approval of April 27, 2011 Joint Regular Meeting Agenda, CDD #2**
- **Approval of April 27, 2011 Joint Regular Meeting Agenda, CDD #1**

Robertson asked for any additions or corrections to the agenda. There were no additions or corrections.

**On MOTION for Fiddler's Creek CDD #1 by Mr. Brougham and seconded by Mr. Bergmoser, with all in favor, the April 27, 2011 Joint Regular Meeting Agenda, as presented, was approved.**

**On MOTION for Fiddler's Creek CDD #2 by Ms. DiNardo and seconded by Mr. Correia, with all in favor, the April 27, 2011 Joint Regular Meeting Agenda, as presented, was approved.**

**FIDDLER'S CREEK CDD #2 ITEMS**

**THIRD ORDER OF BUSINESS**

**Update: Bankruptcy Proceedings - Robert DeMarco**

Mr. DeMarco indicated there are some sales of property that continue to be the subject of motions and orders, which are moving through the system fairly steadily. He is hopeful they will have a standard order to use for these; however, it is still in the works.

Mr. DeMarco noted the US Bank National trustee, as indenture trustee, filed a lawsuit against CDD #2, in Collier Circuit Court, Case No. 11-1183-CA. He indicated he will not comment publicly regarding the nature of the lawsuit or any of its content; he will request an executive session to discuss the lawsuit with the Board. In connection with this lawsuit, a subpoena was issued yesterday to Mr. Robertson, as Chair of CDD #2, which he has not yet

seen. Mr. Robertson reported he has not received the subpoena. Mr. DeMarco advised Mr. Robertson to notify him immediately, should he be served, and provide him with a copy of the subpoena.

Mr. DeMarco reviewed the upcoming deadlines, including May 12, 2011, which is the deadline for objections to confirmation. May 16, 2011 is the deadline for the date by which ballots, with respect to voting on the various plans, must actually be received by the debtors' counsel.

Regarding the indenture trustee's motion for standing, there was a hearing and the court denied the motion, without prejudice, on the basis of the debtor's counsel's representation that the debtor's counsel would not object, on the basis of standing, to the indenture trustee's participation in the discovery and confirmation process. There is no order stating the indenture trustees have standing but the process has been established by which they will be participating in the discovery and confirmation processes. Mr. DeMarco indicated the fact that they are now allowed to participate has some ramifications with respect to the CDDs and the extent to which the CDDs will actually have to file their own objections, or follow the lead of the trustee. He noted this is something that will need to be discussed in executive session.

Mr. DeMarco advised the Board of his intention to request an executive session on May 5, 2011, at 8:00 a.m., to discuss the indenture trustee's lawsuit, any objections to confirmation, issues related to voting and confirmation and, to the extent that any discovery or a subpoena is served, discussion of those. He anticipates another executive session on May 12, 2011, followed by a public session. The executive session would be to discuss any objection to confirmation that should be filed and any last minute issues related to balloting and voting. During the public session, the Board would vote on whether to file objections to confirmation and vote yea, nay or abstain, with regard to the balance.

Due to advertising requirements, Mr. Adams suggested continuing today's meeting to May 5, 2011, at 8:00 a.m., and holding the executive session within the continued public meeting. Regarding the May 12, 2011 meeting, Mr. Adams indicated there is sufficient time to advertise and asked the Board to confirm an 8:00 a.m. start time. The Board concurred with the dates and times for the May 5 and May 12 meetings. Discussion ensued regarding the approximate length of the meetings and the documents to be discussed. Mr. DeMarco agreed to

forward the necessary documents to Management, who will provide the Board Members with CDs of the information.

Mr. DeMarco indicated he is curious to know if the indenture trustee will engage in discovery in the new lawsuit but anticipates it and he asked the Board to ensure he is notified immediately of anything that happens.

**FIDDLER'S CREEK CDD #1 ITEMS**

**FOURTH ORDER OF BUSINESS**

**Update: Bankruptcy Proceedings - Aleida  
Martinez Molina**

Ms. Martinez Molina concurred with Mr. DeMarco's statements and added, at a hearing on April 9, the court granted the debtors' motion to extend the time to file intercompany claims; they now have until May 1. She indicated, last week, they denied the debtors' application authorizing them to retain Sterns Weaver, as special corporate and tax counsel, which was a hotly debated item, of which the judge took note of possible conflicts of interest. The motion was denied without prejudice so if the debtors want to retain Sterns Weaver, in the future, they can apply again. Ms. Martinez Molina indicated the debtors served motion as to insurance premium finance was entered.

Ms. Martinez Molina indicated tomorrow is the deadline for the debtors to respond to the discovery which the CDD propounded back to them on March 29. The parties in interest have tried to reach consensus and narrow the issues but it is still being worked on. She reported, about a month ago, on behalf of CDD #1, they asked the debtors to confirm that 951 Landholding's debtor and/or its assign, will continue to manage and maintain the conservation area, as set forth in a conservation easement; to date, they have not heard back on this matter.

Ms. Martinez Molina reported that the bondholders forwarded a declaratory action to her; it is a complaint similar to, but not the same as, the one served upon CDD #2. She voiced her understanding that, as of this morning, it had not been served upon CDD #1 and she is not sure if it was filed. She is awaiting word on the matter.

Ms. Martinez Molina indicated the solicitation packet regarding the ballots was received last week and was forwarded to Mr. Adams for distribution to the Board. She noted the Board has a meeting scheduled for May 11 and requested an executive session. Mr. Adams advised the purpose of the May 11 meeting is to determine if there are any objections to file before the May

12 deadline and to discuss any remaining issues, in executive session, prior to a public session, with the voting deadline being May 16. Mr. Adams asked the Board to agree to a meeting on May 11, at 1:00 p.m., with an executive session, within the public meeting.

Mr. Brougham asked what actions the Board should take, when or if the lawsuit is filed, and if the Chair would be served. Mr. Adams indicated the registered agent should be served, which, in both cases, is Management's office, unless they are doing personal filings.

Mr. Brougham asked what the lawsuit is about. Ms. Martinez Molina indicated, generally, it poses the question, to the state court judge, as to the different rights of the entities. It does not mention bankruptcy anywhere in the entire document. She was not comfortable discussing it further in this public session.

Mr. Adams asked those who have called into the meeting to identify themselves.

Mr. Tom Messana, representing US Bank, with respect to CDD #2's 2004 and CDD #1's 2005 bonds, indicated he joined the meeting during Mr. DeMarco's presentation.

Mr. Keith Fender, of Holland & Knight and representing US Bank, with respect to the 2003 Series A and B bonds, identified himself.

Mr. John Hutton, of Greenberg Traurig, representing US Bank, as indenture trustee, indicated he joined the meeting during Mr. DeMarco's presentation.

**\*\*\*Mr. DeMarco and Ms. Martinez Molina left the meeting.\*\*\***

## **JOINT MEETING ITEMS**

### **FIFTH ORDER OF BUSINESS**

#### **Developer's Report/Update**

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

Mr. DiNardo deferred discussion of this item to the District Engineer's Report.

### **SIXTH ORDER OF BUSINESS**

#### **Engineer's Report**

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

For the CDD #1 Series 2005 bond, Mr. Cole presented Requisition #56, for approximately \$22,000, for costs related to completion of the Phase 3, Unit 1 punch list items, work on Championship Drive and professional fees.

For the CDD #2 Series 2005 bond, Mr. Cole presented Requisition #64, for approximately \$18,000, for costs related to renewal of construction/maintenance bonds for 4U3 and 5U2, plus professional fees.

Mr. Cole reported that the preserve area monitoring is being completed now and he expects a report soon, which will indicate the type of spray treatment they need to do. He noted this had not been completed for several months due to the bankruptcy issues and not getting paid. Mr. Cole indicated he is preparing a comprehensive lake erosion report for CDD #1 and spent several days inspecting the lakes, meeting with contractors and developing a list of issues. He briefly reviewed the repair methods discussed with the various contractors.

Mary Ann Murphy, of Whisper Trace, introduced herself.

Mr. Brougham explained the erosion issue now extends beyond Whisper Trace and the District Engineer is completing a comprehensive study of all lakes within the District. He asked her to report this information back to the Whisper Trace community. In response to Ms. Murphy's question, Mr. Brougham indicated Whisper Trace will not be charged for any of the work to be completed.

Mr. Cole indicated there are no eminent dangers as a result of the erosion. In response to a question from CDD #2, Mr. Cole confirmed he asked if this item could be added to the approved list of construction item authorized repairs but has not received a response.

- **Consideration of Transferring Certain Performance Bonds (*materials to be provided at the meeting*)**

Mr. Cole explained the required performance bonds for work and the amounts to be posted. He indicated most of the Districts' projects have received preliminary acceptance. The developer requested, in conjunction with the bankruptcy, that the performance bonds be put in the name of the CDDs and not the developer. He explained that the bond renewal premiums have been paid through the construction funds throughout the course of the project, for the CDD-related portion of the work. The non CDD-related portion was paid by the developer.

Mr. Brougham asked for confirmation that the matter the Districts are considering is the transfer of the performance bonds from the developer to the Districts and questioned why they should be transferred. Mr. DiNardo called attention to the spreadsheet column showing the CDD percentage, noting CDD #1 benefits 100% and CDD #2 benefits 88.2% or higher, from the projects. Mr. DiNardo indicated the developer no longer has the funds to front payment of the

bonds; it is easier for the CDDs to get the bonds. Mr. DiNardo summarized the Districts are benefitting, not the developer. Mr. Brougham asked what happens to the proceeds of the performance bonds, once the work is all completed. Mr. DiNardo clarified these are surety bonds; the premium is paid to ensure the work is done.

Mr. Cole noted, for the \$423,000 CDD #1 bond with the \$5,291.07 premium, he obtained approval from the county to reduce that bond to about \$119,000, based on work that has been completed and accepted, thereby reducing the premium to about \$1,500. Mr. Cole indicated he expects to close that project out within the next few months. In response to Mr. Adams' question, Mr. Cole confirmed these are annual premiums and, once the project is closed out, the District would receive a credit on the unused portion of the premium.

Mr. Brougham questioned the responsibility or liability of the Districts. Mr. Cole indicated the Districts would be responsible for completing the work items, in order to obtain final expenses. In response to Mr. Brougham's question, Mr. DiNardo confirmed the CDD #1 projects listed were all on the bondholders' approved work list and, as long as it is on the approved list, the work can go forward and be paid for. Mr. Brougham asked what happens if the bondholders decide not to pay, even though they approved the work. Mr. Cole indicated Collier County could do the work, if that happens, and use the bonded money to pay.

***\*\*\*Due to audio malfunctions, this portion of the meeting was transcribed from the meeting notes.\*\*\****

**On MOTION for Fiddler's Creek CDD #1 by Mr. Slater and seconded by Mr. Brougham, with all in favor, transferring certain performance bonds from the developer to CDD #1 was approved.**

## **FIDDLER'S CREEK CDD #1 ITEMS**

### **SEVENTH ORDER OF BUSINESS**

### **Presentation of Audited Financial Report for Fiscal Year Ended September 30, 2010, Prepared by Grau & Associates**

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

Ms. Michelle Blackstock, of Grau & Associates, presented the Fiddler's Creek CDD #1 Audited Financial Report for the fiscal year ended September 30, 2010.

**EIGHTH ORDER OF BUSINESS**

**Consideration of Resolution 2011-3,  
Accepting the Audited Financial Report  
for the Fiscal Year Ended September 30,  
2010**

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

**On MOTION for Fiddler's Creek CDD #1 by Mr. Schutt and seconded by Mr. Bergmoser, with all in favor, Resolution 2011-3, Accepting the Audited Financial Report for the Fiscal Year Ended September 30, 2010, subject to any modifications to the bankruptcy language suggested by Ms. Martinez Molina, was adopted.**

**JOINT MEETING ITEMS**

**NINTH ORDER OF BUSINESS**

**Approval of March 23, 2011 Joint  
Regular Meeting Minutes**

Mr. Robertson presented the March 23, 2011 Joint Special Meeting Minutes and asked for any additions, corrections or deletions. The following changes were made:

Line 45: Change "Preed" to "Fried"

Lines 75 and 77: Change "plan" to "plans"

Line 78: Change "order" to "orders" and "ballot" to "ballots"

Lines 78 and 80: Change "plan" to "plans"

Line 82: Change "ballot" to "ballots"

Line 101: Change "claims" to "plans"

Line 105: After "action", insert "filed"

Line 115: Change "debtor" to "debtors"

Line 130: Change "debtor's" to "debtor"

Line 201: After "requests", insert "as originally drafted,"

Line 206: Delete "of"

Line 215: After "statement", delete "about the" and insert "alluding to the"

Line 215: After "ruling", insert "as to lack of standing"

Line 216: Change "indicated" to "clarified"

Line 220: Change "plan" to "plans are"



- Line 221: Change "it" to "they" and change "does" to "do"
- Line 412: After "for", insert "CDD #2's"
- Line 474: Change "eminent" to "imminent"
- Line 477: Change "draught" to "drought"
- Line 481: Change "eminently" to "imminently"
- Lines 488, 490, 491 and 492: Change "Preed" to "Fried"
- Lines 502 to 503: Change "in tact" to "intact"
- Line 549: Change "defuncted" to "defunct"
- Line 666: Change "Pires" to "Curland"
- Line 674: Insert "1" after "#"
- Line 718: Change "#1" to "#2"

**On MOTION for Fiddler's Creek CDD #1 by Mr. Bergmoser and seconded by Mr. Slater, with all in favor, the March 23, 2011 Joint Special Meeting Minutes, as amended, were approved.**

**On MOTION for Fiddler's Creek CDD #2 by Mr. Robertson and seconded by Ms. Scott, with all in favor, the March 23, 2011 Joint Special Meeting Minutes, as amended, were approved.**

**TENTH ORDER OF BUSINESS**

**Other Business**

There being no other business, the next item followed.

**ELEVENTH ORDER OF BUSINESS**

**Staff Reports**

**a. Attorney**

There being nothing additional, the next item followed.

**b. Manager**

**i. NEXT MEETING DATE: May 25, 2011 at 8:00 A.M.**

Mr. Adams indicated the next joint regular meeting will be held on May 25, 2011 at 8:00 a.m., at this location.

**c. Operations Manager**

***\*\*\*Transcription from audio resumed near the conclusion of the Operations Manager's report.\*\*\****

Ms. Crismond presented the Field Operations Monthly Status Report. She indicated the next scheduled lake tour will be completed in May. As approved by the Board, the bull rush removal project was completed and Management will obtain a quote to replace the littoral plants in May. Management continues to review the property, on a weekly basis, with TruGreen. She will tour in May with Mr. Vajen, Mr. Albeit, Mr. Fulker and Supervisor DiNardo. All plant replacements were completed, with the exception of some sod, which will be completed in June, during the rainy season. Annuals will be replaced in May and trimming/pruning of hedges is underway. Regarding tree trimming, Ms. Crismond met with the contractor and Mr. Vajen to determine the areas of trimming for this year and the project is scheduled to commence the week of May 9. Ms. Crismond described the trimming to be done in each CDD. Discussion ensued regarding tree trimming concerns. Ms. Crismond reported the patrol stats indicating, as of Friday, April 22, there were 11 total stops; seven (7) residents and four (4) guests. Patrol services completed two (2) details during the month. Two (2) citations and nine (9) warnings were issued.

**FIDDLER'S CREEK CDD #2 ITEMS**

**TWELFTH ORDER OF BUSINESS**

**Approval of February 14, 2011 Continued Meeting Minutes**

Mr. Robertson presented the Fiddler's Creek CDD #2 February 14, 2011 Continued Meeting Minutes and asked for any additions, deletions or corrections.

**On MOTION for Fiddler's Creek CDD #2 by Mr. Robertson and seconded by Ms. DiNardo, with all in favor, the February 14, 2011 Continued Meeting Minutes, as presented, were approved.**

**THIRTEENTH ORDER OF BUSINESS**

**Unaudited Financial Statements as of March 31, 2011**

Mr. Adams presented the Unaudited Financial Statement, for CDD #2, as of March 31, 2011 and indicated the District is continuing to overspend incoming revenue. He briefly described the costs related to the foreclosure. He anticipates a few large legal bills, as confirmation in the foreclosure case nears. Mr. Adams described the tax certificate sales process and timeline for receipt of proceeds from the tax certificate sales.

Mr. Andrew Sanford, of ITG Holdings, LLC, questioned the \$411,000 due to developer line item and asked if it was a capital project. Mr. Adams indicated it is the shortfall funding that was approved by the court. Mr. Adams explained, upon confirmation of the plans, the amount owed back for the shortfall funding will be deducted from outstanding O&M amounts and CDD #2 will receive the net proceeds due.

**FOURTEENTH ORDER OF BUSINESS**

**Audience  
Requests**

**Comments/Supervisors'**

There being no audience comments or Supervisors requests, the next item followed.

**FIFTEENTH ORDER OF BUSINESS**

**Continuation: Fiddler's Creek CDD #2**

There being no further business, CDD #2 continued the meeting to Thursday, May 5, 2011 at 8:00 a.m., to include an executive session.

**On MOTION for Fiddler's Creek CDD #2 by Mr. Robertson and seconded by Ms. DiNardo, with all in favor, the Fiddler's Creek CDD #2 meeting recessed and continuation of the meeting to Thursday, May 5, 2011 at 8:00 a.m., at this location, and authorizing inclusion of an executive session, within the continued meeting, as previously requested by Mr. DeMarco, was approved.**

**FIDDLER'S CREEK CDD #1 ITEMS**

**SIXTEENTH ORDER OF BUSINESS**

**Approval of March 29, 2011 Continued  
Meeting Minutes**

Mr. Brougham presented the March 29, 2011 Continued Meeting Minutes and asked if for any additions, deletions or corrections.

**On MOTION for Fiddler's Creek CDD #1 by Mr. Schutt and seconded by Mr. Curland, with all in favor, the March 29, 2011 Continued Meeting Minutes, as presented, were approved.**

**SEVENTEENTH ORDER OF BUSINESS**

**Unaudited Financial Statements as of  
March 31, 2011**

Mr. Brougham presented the Unaudited Financial Statements as of March 31, 2011 and asked for questions.

A Board Member noted the assessment levy, as of March 31, is 73% of budget, and asked if it is low, high or average. Mr. Adams indicated it is low; however, there is a group of platted lots in CDD #1 that are developer-owned and the developer is not making assessment payments on those due to the bankruptcy stay. Mr. Adams noted the legal expenses for the month.

In response to Mr. Brougham's question, Mr. Adams confirmed the Wilma Fund loan was paid in full. Regarding the residual funds, Mr. Adams suggested waiting a few months, until receipt of the confirmation that funds were received, to determine whether to transfer them to general fund 001 or credit the residual funds back to the property owners, in the subsequent budget. Mr. Adams noted some paid off their assessments and the excess funds must be credited back to those individuals. In response to Mr. Brougham's questions, Mr. Adams confirmed there is a legal obligation to credit or pay back to the property owners.

**EIGHTEENTH ORDER OF BUSINESS**

**Audience  
Requests**

**Comments/Supervisors'**

Mr. Slater asked the Board to discuss who will be present for the summer meetings. It was confirmed that at least three (3) Board Members will be present each month, during the summer.

**NINETEENTH ORDER OF BUSINESS**

**Adjournment: Fiddler's Creek CDD #1**

There being no further business, the meeting adjourned.

**On MOTION for Fiddler's Creek CDD #1 by Mr. Brougham and seconded by Mr. Slater, with all in favor, the Fiddler's Creek CDD #1 meeting adjourned.**

**Fiddler's Creek CDD #1**

  
Secretary/Assistant Secretary

  
Chair/Vice Chair

**Fiddler's Creek CDD #2**

  
Secretary/Assistant Secretary

  
Chair/Vice Chair