

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

The Boards of Supervisors of the Fiddler's Creek Community Development District #1 and Fiddler's Creek Community Development District #2 held a Joint Regular Meeting on **Wednesday, September 28, 2011 at 8:00 a.m.**, at the **Fiddler's Club and Spa, 3470 Club Center Boulevard, Naples, Florida 34114.**

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

Phil Brougham	Chair
James Curland	Vice Chair
Gerald Bergmoser	Assistant Secretary
Jim Schutt	Assistant Secretary
Robert Slater (via telephone)	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	Assistant Regional Manager
Tony Pires	District Counsel
Terry Cole	District Engineer
Aleida Martinez Molina (via telephone)	Weiss Serota, Special Counsel CDD #1
Robert DeMarco	Treiser Collins, Special Counsel CDD #2
Mike Williams	Bond Counsel
Hank Fishkind	Fishkind & Associates, Inc.
Paul Battista (via telephone)	Debtor's Counsel
Doug Darbut (via telephone)	Bondholder Representative (CDD #2)
Chris Wieback (via telephone)	Bondholder Representative (CDD #2)
Amy Lowen	Trustee Counsel
Tony DiNardo	Gulf Bay Communities
Mark Strain	Gulf Bay Communities
Andrew Sanford	ITG Holdings
Amanda Barton	ITG Holdings Counsel
Garrett Cuttler	Resident

\_\_\_\_\_ Barron  
Jesse Fritz  
Elliot Miller  
Joe May  
Bill Klug  
Janet Benedetti  
Nick Carsello  
Elysee Marshall

Resident  
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**FIRST ORDER OF BUSINESS**

**Call to Order/Roll Call**

Mr. Adams called the meeting to order at 8:00 a.m. He noted that Supervisors Brougham, Curland, Bergmoser and Schutt were present, in person, for CDD #1. Supervisor Slater was attending via telephone. For CDD #2, Supervisors Schmitt, Correia, Robertson, DiNardo and Scott were present, in person.

**On MOTION for Fiddler's Creek CDD #1 by Mr. Brougham and seconded by Mr. Curland, with all in favor, the acknowledgment of exceptional circumstances for Supervisor Slater to attend, via telephone, was approved.**

**SECOND ORDER OF BUSINESS**

**Adjournment of Cancelled September 2,  
2011 Continued Meeting**

Mr. Brougham indicated the September 2, 2011 meeting was cancelled.

**THIRD ORDER OF BUSINESS**

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

Mr. Brougham asked for any corrections or additions to the agenda.

Mr. Adams confirmed that an updated agenda, including discussion of the security services, was provided to the Boards and distributed copies to those that had not received it. Mr. Brougham indicated the new item is under the Twelfth Order of Business.

- **Approval of September 28, 2011 Joint Regular Meeting Agenda, CDD #1**

**On MOTION for Fiddler's Creek CDD #1 by Mr. Brougham and seconded by Mr. Curland, with all in favor, the September 28, 2011 Joint Regular Meeting Agenda, as revised, was approved.**

- **Approval of September 28, 2011 Joint Regular Meeting Agenda, CDD #2**  
Mr. Correia asked for any corrections or additions to the agenda.

**On MOTION for Fiddler's Creek CDD #2 by Mr. Robertson and seconded by Ms. Scott, with all in favor, the September 28, 2011 Joint Regular Meeting Agenda, as revised,, was approved.**

**FIDDLER'S CREEK CDD #1 ITEMS (Bankruptcy related)**

**FOURTH ORDER OF BUSINESS**

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

Ms. Martinez Molina indicated the order confirming plans of reorganization was signed on August 29, 2011 and the plan has become effective, meaning she assumed the reorganized debtors are making payment, pursuant to the plan. The signing of the order was challenging, as the debtors proposed an order; however, after a hearing, the judge entered the order, with certain changes. Ms. Martinez Molina reported that an order was entered, several days ago, dismissing the bankruptcy adversary proceeding by US Bank, against CDD #1. She detailed the two (2) lawsuits previously filed against CDD #1 by US Bank, one of which is now dismissed and the other has been remanded to state court. There have been no new developments in the pending lawsuit.

Regarding the bankruptcy, in general, Ms. Martinez Molina advised that several supplemental fee applications were filed by various entities and will be heard next month.

**FIFTH ORDER OF BUSINESS**

**Presentation/Consideration of Revised  
Supplemental Assessment Methodologies  
- Dr. Hank Fishkind**

Dr. Fishkind indicated this is the first step in the two (2)-step process of launching the assessment process, under Chapter 170, whereby the District will establish new levels of debt

that will be the restructuring of the existing debt, pursuant to the plan. He introduced himself and provided a brief summary of his qualifications and experience, noting that he prepared the original methodology reports for both Districts.

Dr. Fishkind presented the Supplemental Assessment Methodology Report. He advised that, as a result of the approved reorganization plan, it is important for the District to supplement its existing Master Assessment Methodology to reflect restructuring of the bonds. He stated the original methodology was supplemented, as each set of bonds was issued, to accommodate changes. Dr. Fishkind referred to Table 1, on Page 3, explaining it reflects the bond debt to be restructured, based on what was confirmed in the reorganization plan. Mr. Brougham recalled several revised supplemental methodologies, over the years, and asked if the Board should anticipate a supplemental methodology every time the land use changes. Dr. Fishkind replied affirmatively. Table 2, on Page 4, shows the debt allocation over the unplatted properties, based on the District's adopted assessment methodology, according to net acreage, including ponds, roads and land without a building. He referred to Table 3, on Page 5, which is a calculation of the ceiling amount of debt for the true up test; as proposed, the debt per net acre would be \$155,716. Table 4 reflects an analysis of whether the amount of debt, per acre, will exceed the ceiling amount that was set. Dr. Fishkind discussed the original calculations from 1996 and the switch, over time, from gross acres to net acres. He detailed converting the original debt per gross acre figures to debt per net acre, resulting in a debt per net acre amount of \$161,627, based on the 1996 figures. As the new proposed amount is \$155,716, the District would not exceed the ceiling methodology requirement originally set in 1996. Mr. Brougham explained where these assessments appear on the tax bills and assured the homeowners that their allocated bond debt will not change, as a result of this restructuring.

Dr. Fishkind explained the next step was to determine if the restructured assessments confer a special benefit on the properties that will pay those assessments, which is critical, as the District would not be able to impose assessments on properties if the cost of those assessments exceeded the benefit. He confirmed that the special benefits exceed the assessment amount test. Mr. Schutt stated the lots purchased by DR Horton are in the parcels listed on Table 2. Dr. Fishkind clarified that the lots are in CDD #2 but they are in the Fiddler's Creek community. Mr. Schutt questioned the validity of the evaluation, as the numbers are generated specific to a list of parcels in Table 2; Dr. Fishkind is using lots outside of those parcels. Dr. Fishkind

indicated this is the available data; he does not have transactions in CDD #1 but, since both Districts are part of the same community and the amount of benefit is so large, compared to the debt, he feels it is a reasonable yardstick to apply.

Dr. Fishkind referred to Table 5, on Page 8, showing the new land plan for the remaining unplatted acres. He explained how that debt is allocated to the properties, based on benefit, and detailed the analysis of the restructured assessments for roads and other uses. Mr. Brougham asked Mr. Cole if the roads within CDD #1 are fully constructed. Mr. Cole indicated the roadways within the 2005 Series bonds have not been completed; however, the roadways to the east were considered non-CDD. The roads originally planned with CDD funds have been built. Dr. Fishkind noted the numbers are correct on Tables 7 and 8 but Table 6 contains a typo, it should reflect \$4,616,144, instead of \$5,494,038. He explained how allocations were made, as new lots came into the District. Table 10, on Page 11, shows the tax roll with the amount of the assessments, allocated on a net acreage basis, along with administrative charges. In response to Mr. Brougham's question, Dr. Fishkind confirmed the administrative charges are an allowance for early payment of taxes and allowable fees charged by the tax assessor and/or tax collector.

Mr. Schutt voiced his opinion that Dr. Fishkind is referring to this as a supplemental assessment methodology but, from what was said, it seems the methodology has been consistent and all that is being discussed now is a different amount of money because of the bankruptcy and the deferral of payments until 2012. He felt the methodology, per se, has not changed; rather, it is the amount and distribution. They will still divide x by y and use acreage on the identified lots. Dr. Fishkind confirmed Mr. Schutt's opinion is correct, noting that is why it was titled as a supplemental rather than a restatement or amendment.

Mr. Bergmoser asked what the debt per net acre was, prior to the proposed change. Dr. Fishkind did not know but thought it was probably a little lower because there was no capitalized interest. Dr. Fishkind felt it has not changed significantly and pointed out it is below the ceiling amount, which is what really counts.

Mr. Slater recalled Dr. Fishkind's earlier statement that a reallocation may be necessary in the future, if there is a significant change, and asked what constitutes a significant change. Dr. Fishkind advised that the current land plan calls for 114 55-foot lots and if the plan was reduced to 112, it would not be significant; however, if there was a new product type that is not currently in the table, that would be a change requiring a supplement.

Mr. Curland indicated the bondholders removed a significant amount of cash from the bonds, during the past few years, and asked what impact it had. Dr. Fishkind stated that the court did not allow for the removal of those monies; the plan confirmed by the court assumed those monies were available to pay down bond debt or stay in the construction fund. To the extent those monies were used for other purposes, Dr. Fishkind's position was that the bondholders were repaid the money, regardless of how they chose to use it, and the monies cannot be paid twice. A Board Member asked if the \$34 million amount should be adjusted by the \$5 or \$6 million that was taken out of the available funds. Dr. Fishkind explained that the plan anticipated that the funds would be used to call down the bonds and it appears, in essence, that the bondholders have called some of the bond debt early, themselves. Dr. Fishkind confirmed the money is already netted out. Noting the funds are not there, Mr. Robertson asked if there is a requirement for the bondholders to repay the funds. Dr. Fishkind discussed that the monies could be repaid through the construction account but it would then come back out to the bondholders. Because there is nothing left to construct, the money was to be used to call bonds early. If some of the money was used, then fewer bonds can be called early; however, a lawyer may advise differently. The plan anticipated those monies would be used to call bonds, not to conduct a legal battle.

Mr. Garrett Cuttler, a resident, asked if the 55-foot lots are sized for condominium or single-family home construction. Mr. Brougham and Dr. Fishkind confirmed they are 50-foot lots and are for single-family homes.

Mr. \_\_\_\_\_ Barron, a resident, asked if the DR Horton purchase closed. Mr. DiNardo indicated they expect to close in early October.

Mr. Jesse Fritz, a resident, asked if there are any rules, regulations or population zoning on the 50-foot lots. Mr. Brougham indicated it was a commitment, within the reorganization plans, that each development would adhere to the existing standards and/or be required to come before the Design and Review Committee (DRC) for any changes.

**SIXTH ORDER OF BUSINESS**

**Consideration of Certain Documents  
Authorizing, Noticing and Establishing a  
Public Hearing to Adopt the Revised  
Supplemental Assessment Methodologies  
- Michael Williams (to be provided under  
separated cover)**

Mr. Adams introduced Mr. Michael Williams, Bond Counsel, and author of the resolutions under consideration. He advised that there are two (2) resolutions for each bond series, which must be considered.

Mr. Brougham stated his understanding that the purpose of these resolutions is to announce, to the public, the Board's intentions to conduct certain business and actions, into the future.

Mr. Williams indicated the resolutions are drafted pursuant to Florida Statutes. He explained that Resolutions 11-08 and 11-10 are identical, except they relate to the different bond series, as is also the case with Resolutions 11-09 and 11-11. The resolutions provide for the public hearing to be held on October 28, 2011.

- **Resolution 11-08**

Mr. Brougham presented Resolution 11-08 for the Board's consideration.

**On MOTION for Fiddler's Creek CDD #1 by Mr. Curland and seconded by Mr. Bergmoser, with all in favor, Resolution 11-08 was adopted.**

- **Resolution 11-09**

Mr. Brougham presented Resolution 11-09 for the Board's consideration.

Mr. Adams asked to confirm a quorum for October 28, 2011. The Board was polled and three (3) Board Members confirmed their attendance, in person, at the public hearing on October 28, 2011.

**On MOTION for Fiddler's Creek CDD #1 by Mr. Curland and seconded by Mr. Bergmoser, with all in favor, Resolution 11-09 was adopted.**

- **Resolution 11-10**

Mr. Brougham presented Resolution 11-10 for the Board's consideration.

**On MOTION for Fiddler's Creek CDD #1 by Mr. Brougham and seconded by Mr. Curland, with all in favor, Resolution 11-10 was adopted.**

▪ **Resolution 11-11**

Mr. Brougham presented Resolution 11-11 for the Board's consideration.

**On MOTION for Fiddler's Creek CDD #1 by Mr. Curland and seconded by Mr. Bergmoser, with all in favor, Resolution 11-11 was adopted.**

**FIDDLER'S CREEK CDD #2 ITEMS (Bankruptcy related)**

**SEVENTH ORDER OF BUSINESS**

**Presentation/Consideration of Revised  
Supplemental Assessment Methodologies  
- Dr. Hank Fishkind**

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

Dr. Fishkind presented the Supplemental Assessment Methodology Report for CDD #2. He advised that it would follow the parameters of the District's assessment methodology reports adopted in 2003 and supplemented in 2004 and 2005, as additional bonds were issued, costs changed and land use changed. Dr. Fishkind indicated this is a continuation of the same process, except this time there is a plan confirmation with restructured assessments and a new plan of development for a portion of the affected area. The difference for CDD #2 is that a portion of the affected area is already platted and debt was assigned, based on the assessment methodologies. The debt service is restructured on those plats but the amount of debt assigned to them will not change, because they are already platted.

Referring to Table 1, on Page 3, Dr. Fishkind specified that \$73,565,000 of debt is being restructured. Table 2, on Pages 4 and 5, shows the land over which the restructured assessments occur; the platted properties do not show a net acreage amount. The debt per unplatted net acre is \$202,878. Table 3 conducts the analysis of the true up test converting the original amount of debt per gross acre to a net acre basis. The ceiling amount established in 2003, on a net acre basis, was \$269,157 and the amount of the restructured debt per net acre would be \$202,878, so the true up test is satisfied. Dr. Fishkind discussed the analysis of special benefits, noting the DR



Horton lots are in CDD #2, meaning, there is no doubt that benefit is being created, in excess of the proposed assessments. He moved to Tables 4 and 5, on Page 9, which show the land use plan for the unplatted portion of the property and the allocation between roadways and non-roadways, respectively, based on the original capital improvement plan. Table 6, on Page 10, allocates roadway debt to the unplatted properties. Table 7, on Page 11, allocates the other costs to the unplatted properties, based upon the equivalent residential unit (ERU) methodology, and Table 8 reflects the amount of the assessments that would be allocated to plats, as they are presented.

Dr. Fishkind referred to Table 9, on Pages 12 and 13, showing the tax roll for the platted and unplatted properties, based upon the plan for confirmation, and it delays principal and interest payments until 2012 or 2013, depending on the restructuring for the particular piece of debt.

Mr. Robertson referred to Table 2 and asked if the platted lots are sold. Dr. Fishkind indicated some were assigned, or transferred, but most are not sold and remain in the debtor's hands. Mr. Robertson recalled that, as part of the Chapter 11 process, it was asserted that some of the prior debt allocations were in error, and asked if those prior errors were corrected in Table 2. Dr. Fishkind replied affirmatively. Mr. Robertson stated that the methodology was not changed, only the dollar and acreage amounts changed. Dr. Fishkind indicated it was a ministerial error of confusion about the timing of plats.

Mr. Correia asked if the methodology process will be necessary every time a developer finds other uses for the land. Dr. Fishkind indicated Staff will do so, as necessary, in accordance with Table 8. In response to a question regarding certain properties not included on Table 2, Dr. Fishkind advised that those were not included because they are platted properties.

Mr. Sanford asked Dr. Fishkind if he could include a timing of assessments section in this document, the same as what was included in the previous supplemental assessment methodologies. Dr. Fishkind was agreeable, with the Board's permission. This section would state the District's process, which is, first platted, first assigned a piece of debt. The Board was agreeable to adding the section, near the end of the report. Mr. Sanford had additional questions, which Mr. Robertson recommended addressing to Dr. Fishkind, outside of the meeting. Dr. Fishkind indicated this process launches the notification to the landowners of the Board's intention and the 30-day process provides time for input and discussion with landowners and affected parties.

Mr. Elliot Miller, a resident, questioned if the units in the Menaggio area are sold. Dr. Fishkind advised that they are treated as platted, so they have debt that was previously assigned, they were part of the bankruptcy confirmation and transferred to Fifth Third, putting Fifth Third into the debtor's shoes, and a pay down is not required. Mr. Miller asked if the transfer to Fifth Third could be considered a sale, as it is in satisfaction of an obligation. Dr. Fishkind felt that assumption would be correct; however, he believed the bankruptcy court treated it differently and they have the power to allocate these types of issues.

Ms. Barton, representative for a 2003 Series bondholder, noted Fifth Third is stepping into the shoes of a debtor and will receive a one (1) to two (2)-year forbearance period. She voiced concern that this will go on with end users for CDD #2 and asked if this is setting in stone that any unit sold to an end user would also benefit from a forbearance period. She stated her understanding, through the bankruptcy documents, that, with any unit sold to an end user, the past due assessments would be brought current and would be paid, going forward. Dr. Fishkind was of the opinion that it does confer the two (2)-year benefit; the sizing of the structured debt includes the two (2) years. Dr. Fishkind indicated this was locked in, when the court approved the plan. Ms. Barton indicated the bondholder she represents takes issue with that and she requested a discussion on the matter, prior to the next meeting.

Referring to Table 1, for CDD #1, Mr. Battista recalled that Dr. Fishkind deducted, from the amount of the bond debt, the bonds that were called and asked if a similar deduction was made for CDD #2. Dr. Fishkind replied affirmatively; the plan did not allow for any use of funds by the bondholders for any purpose except for calling bonds.

Regarding Ms. Barton's concerns, Mr. Darbut asked about the format for discussing objections to Dr. Fishkind's non-legal conclusion with respect to the deferral and paying the pay down. Dr. Fishkind indicated he can discuss it with them during the 30 days. In response to Mr. Darbut's question, Dr. Fishkind confirmed the discussions would be with him, Mr. Williams and could include Mr. Pires. Mr. Darbut questioned if Dr. Fishkind was saying the amount of the assessments will net out or otherwise diminish the amount paid to the bondholders. Dr. Fishkind stressed his position that the plan was set up to anticipate a restructuring of \$73,565,000 worth of debt and no portion of that was anticipated to have been used for suing the Boards or for the legal actions that occurred; there is no provision for those expenditures in the context of the confirmation. Dr. Fishkind concluded, if monies were taken from CDD #2's construction fund,

for purposes other than calling bonds, it would be in contradiction to the plan; the figures in the plan do not allow for that. Mr. Darbut asked how the bondholder would otherwise pay the fees and expenses of the trustee incurred to enforce the indenture, if it is not from a deduction in the construction account. Mr. DeMarco recommended that all concerns and questions be put in writing and submitted to him and others, so they can be addressed formally.

Mr. Wieback asked Mr. Battista to clarify if a third-party homeowner buys a home, during this period, whether they must start paying assessments. Mr. Battista's understanding was that the forbearance period no longer applies to a third-party homeowner.

Regarding the issue of deferral of payments for people who buy lots, Mr. DeMarco confirmed that prior to confirmation of the plan, the process was that arrearages were brought current, each time a lot was sold. He noted it appears the process will be changed. Mr. DeMarco advised that Fifth Third will take the lots subject to a forbearance period and will have the benefit of the debt that was provided to the debtor, under the plan; however, if Fifth Third sells a property to an end user the end user, would be required to bring the assessments current. He indicated a new buydown and principal and interest amount per year will be established. Mr. DeMarco asked Dr. Fishkind if this applies to all of CDD #2's bond series' and users other than Fifth Third Bank or only to the 2003A bonds. Dr. Fishkind's interpretation is that it applies to everyone; the sizing of the debt included deferral of the principal and interest payments for two (2) years. For this reason, Dr. Fishkind was of the opinion that a third party also enjoys the benefit of the principal and interest deferral until 2012 or 2013. Dr. Fishkind explained a series of buydowns and true ups would be necessary, if this reasoning is not the case. In response to Mr. DeMarco's question, Dr. Fishkind confirmed his opinion that the deferral period travels with the land and is baked into the amount of debt the Board is about to assign. Mr. DeMarco remarked that his understanding is similar to Ms. Barton's whereby Fifth Third sells a property to an end user, the end user must bring the assessments current. Mr. Battista felt all parties need to discuss this matter to clarify the understanding because he is of the belief that when the debtor sells the property, there is the required pay down with the only exception being the transfer of property to Fifth Third, meaning, they are the only ones with off-roll properties. Mr. Battista confirmed his feeling that Fifth Third is the only party to get the deferral benefit; subsequent owners would be subject to buy downs. Mr. DeMarco respectfully disagreed with Dr. Fishkind's interpretation and reiterated that the only express provision he found, allowing for the deferral

period, related to Fifth Third. Mr. DeMarco asked if the resolutions or the supplemental methodology will need to be changed, should his interpretation be correct. Dr. Fishkind disagreed with Mr. DeMarco and indicated the Board can adopt the resolutions and start the process of holding the public hearing; adjustments can be made. Even if Mr. Battista and Mr. DeMarco are correct, Mr. Williams felt the methodology would not change; they would just provide for a pay down that is not currently reflected in the report.

Mr. Correia asked Mr. DeMarco if it was clear, in the plan and order, that the transfer of properties in Menaggio to Fifth Third was in consideration and is satisfaction of the developer's obligation but is not a sale. Mr. DeMarco indicated he has not researched it but Dr. Fishkind's opinion is that it is not a sale. Discussion ensued regarding whether this issue applies to CDD #1, as well.

**EIGHTH ORDER OF BUSINESS**

**Consideration of Certain Documents  
Authorizing, Noticing and Establishing a  
Public Hearing to Adopt the Revised  
Supplemental Assessment Methodologies  
- Michael Williams (*to be provided under  
separated cover*)**

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

Mr. Williams indicated CDD #2 has three (3) sets of resolutions because it is restructuring three (3) different bond series. He explained that Resolutions 11-08, 11-10 and 11-12 are identical, except they relate to the different bond series, as is also the case with Resolutions 11-09, 11-11 and 11-13. The resolutions provide for the public hearing to be held on October 28, 2011.

▪ **Resolution 11-08**

Mr. Robertson presented Resolution 11-08 for the Board's consideration.

**On MOTION for Fiddler's Creek CDD #2 by Ms. Scott and seconded by Ms. Schmitt, with all in favor, Resolution 11-08 was adopted.**

▪ **Resolution 11-09**

Mr. Robertson presented Resolution 11-09 for the Board's consideration.

**On MOTION for Fiddler's Creek CDD #2 by Ms. Scott and seconded by Ms. Schmitt, with all in favor, Resolution 11-09 was adopted.**

▪ **Resolution 11-10**

Mr. Robertson presented Resolution 11-10 for the Board's consideration.

**On MOTION for Fiddler's Creek CDD #2 by Ms. Scott and seconded by Ms. Schmitt, with all in favor, Resolution 11-10 was adopted.**

▪ **Resolution 11-11**

Mr. Robertson presented Resolution 11-11 for the Board's consideration.

**On MOTION for Fiddler's Creek CDD #2 by Ms. Scott and seconded by Ms. Schmitt, with all in favor, Resolution 11-11 was adopted.**

▪ **Resolution 11-12**

Mr. Robertson presented Resolution 11-12 for the Board's consideration.

**On MOTION for Fiddler's Creek CDD #2 by Ms. Scott and seconded by Ms. Schmitt, with all in favor, Resolution 11-12 was adopted.**

▪ **Resolution 11-13**

Mr. Robertson presented Resolution 11-13 for the Board's consideration.

**On MOTION for Fiddler's Creek CDD #2 by Ms. Scott and seconded by Ms. Schmitt, with all in favor, Resolution 11-13 was adopted.**

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

Regarding the bankruptcy case, Mr. DeMarco indicated two (2) notices of appeal were filed with respect to the confirmation order. The first is by the indenture trustee of Bond Series 2003A and 2003B, regarding an issue of whether the plans of reorganization needed to be revised, amended or modified to accommodate the supplemental assessment methodology. The other bondholders filed an appeal, based on the memorandum of opinion, where they are appealing the confirming of the second amended plans of reorganization and the judge's order denying their motion to designate the voting as being in bad faith. Both appeals remain pending.

Regarding the indenture trustee's lawsuit against CDD #2 seeking a declaratory judgment, Mr. DeMarco reported that a hearing was held September 7 and his motion to dismiss was granted, without prejudice, meaning they have until September 27 to file an amended complaint. He advised that a voluntary notice of dismissal was received, which leads him to believe the state court lawsuit is over.

Mr. DeMarco reported that he received a letter from Ms. DiNardo, addressed to both he and Mr. Pires. He distributed copies and read the letter into the record:

*"Gentlemen:*

*This is directed to you as the attorneys for the Community Development District Number 2, of which I am a member of the Board.*

*As you know, as such a member I have been sued by the bondholders in the action currently pending in the state court, in which Mr. DeMarco made a motion to dismiss the complaint. I understand that at a court hearing on September 7, 2011 that motion was granted without prejudice to the filing of an amended complaint by the bondholders. I have not been advised by Mr. DeMarco as to whether such an amended complaint has yet been filed but, it is reasonable to assume- and to plan for the likelihood- that if it has not yet been filed, it will be shortly. We will need to file an answer with appropriate denials and affirmative defenses.*

*In addition, however, I view it very important to assert a counterclaim against the bondholders for the monies (probably in excess of \$1 million) that the bondholders arrogated from the construction and other funds belonging to the CDDs.*

*It is my belief that the alleged agreement pursuant to which the bondholders took those monies may not have become effective by its own terms. In order to ascertain whether that putative agreement did become effective we need to immediately ascertain: (1) whether that alleged agreement was consented to by a majority in interest of the bondholders or, if it was not, whether there was a written resolution of the CDD Board of Supervisors approving the alleged agreement; and (2) whether there was a written opinion of bond counsel approving the alleged agreement. This information should be immediately provided to the Board of Supervisors together with any existing copies of documents integrating the approvals, the resolution and the opinion of bond counsel.*

*I would like to have this information and documentation provided to me and my fellow board members at an executive session following our September 28, 2011 board meeting. As our attorneys I expect that you will arrange to comply with this request without excuse or delay.*

*Of course, even if the agreement did become effective, I believe that it only authorized the use of CDD funds for a foreclosure proceeding that never happened and for general legal advice, and not for the Chapter 11 proceeding or for lawsuits against the CDD Supervisors.*

*Very truly yours,*

*Victoria DiNardo"*

Mr. DeMarco stated an executive session, at this point, would be premature, as there is no pending litigation about this matter. He suggested the Board instruct him to complete an inquiry, with respect to this. Mr. DeMarco recalled there being two (2) trust accounts, a reserve account and a construction trust acquisition fund account, with them being separate accounts for separate purposes. He remembered a 2010 opinion from Mr. Hank Morgan indicating that, because the assessments were in default, the trustee had the ability to use monies from the reserve account to pay down the debt; however, he did not recall it being suggested that the monies could be used for any other purpose. Mr. DeMarco remarked that he has not seen an accounting from the indenture trustee showing how those monies were specifically applied and asked if the Board has the accounting.

Mr. DeMarco noted the master indenture outlines the procedures to follow, in order to supplement it. He felt some of the comments in Ms. DiNardo's letter relate to whether the appropriate procedures were followed, with respect to supplementing it. Mr. DeMarco referred to a first amendment that was signed October 1, 2009, listing the purpose being to pay a remedial fee, which was defined as the expenses to be incurred by the indenture trustee relative to a foreclosure proceeding that was anticipated but never came to fruition. He reported that a public records request, from the debtors, was recently received and he gathered information with respect to any information, documentation and accounting relating to all monies removed by or paid to the indenture trustee. There are questions as to whether the first amendment to the master indenture was actually done procedurally correctly and/or is valid, based upon the requirements of the master indenture. Mr. DeMarco indicated the first amendment suggests that it is being done with consent of the bondholders but the consent page, in the District's copy of the agreement, is not signed, so there is no evidence of the required consent of more than 51% of the principal amount of bondholders. He noted, if it was not consented to, it was not done with consent and must be done procedurally differently. Ms. Scott asked if this matters, since it relates to an event of foreclosure, which never happened. Mr. DeMarco replied affirmatively, stating if an inquiry is completed, it must be a complete inquiry, to determine if there were any frailties or problems with the process or document. The first issue is whether there was a procedural mechanism that was performed properly, from a procedural standpoint, so the document is valid; if it was done without consent, it must be by resolution of the Board. Mr. DeMarco advised that there was a resolution of the Board that appeared to adopt it, subject to approval by District Counsel. He remarked that he has seen no written evidence that District Counsel approved the authorization. Regardless of consent, pursuant to the master indenture, there must be a written opinion from bond counsel, delivered to both the indenture trustee and the CDDs, indicating that the change being made in the document(s) conforms to and complies with all of the requirements set forth in the master trust indenture. Mr. DeMarco indicated he has not seen an opinion from bond counsel, either, only one from Mr. Hank Morgan, dated October 27, 2010, which was long after the fact and did not address this particular issue. He summarized there are some procedural questions that should be reviewed to determine whether the document was properly brought before the Board and conformed to the master indenture because, if not, it could be void or invalid, in which case, it would not be a basis on which the indenture trustee had the ability to



take money from the construction funds and use it to pay for things other than uses put forth in the master indenture. Mr. DeMarco referred to the specific purposes outlined in the master indenture, discussed the construction account and noted that there may not be a certificate of completion from the District Engineer.

Mr. DeMarco advised that one of the premises of the first indenture is that because the construction was purportedly completed, the monies were effectively surplus and could be used to pay remedial fees.

Mr. DiNardo recalled bringing these issues up during the bankruptcy and requested an accounting from Management and that the US trustee be put on notice that the monies should not be taken from the construction fund, pursuant to the indenture. He noted that the bondholders counsel have been paid with these funds, through the entire bankruptcy process.

Mr. DeMarco summarized that the first issue is whether there is a procedural problem and is the first amendment to the master trust indenture invalid or void and, if not, did the indenture trustee have a legal basis for taking the funds. Even if the first amendment is valid, there is still an issue regarding whether the monies taken were outside of the scope of limited purposes suggested in the first amendment. If it is determined that the monies were not properly taken, the final question becomes what is the remedy. Mr. DeMarco discussed the extensive accounting process that would be needed, to account for the funds, to determine matters such as backdating interest and offsets. As is remaining construction, the CDD might prefer money be returned to the construction fund, rather than an offset.

Mr. DeMarco suspected that the debtors will object to the proofs of claims filed by CDD #2, taking the position that the amount of indebtedness is incorrect, as stated on the proofs of claims because the money paid to the indenture trustee should have offset the amount of the indebtedness. He advised that an objection would be considered pending litigation, which would allow for the Board and him to engage in an executive session to discuss this matter.

Mr. Miller voiced his opinion that the money should be returned to the construction account and urged the Board to take action immediately.

Mr. Wieback reminded the Boards that the CDDs are still in default on the bonds.

Mr. Darbut stated it is the CDD's prerogative to file a lawsuit but he "pretty much guaranteed" he can get it dismissed quickly. He advised that he could point Mr. DeMarco to

places in the existing master indenture that completely permit exactly what the trustee did. Mr. Darbut implied that one must read the documents prior to saying there is nothing in them.

Mr. DeMarco suggested that the CDD #2 Board authorize him conduct an inquiry into the issues raised in Ms. DiNardo's letter.

**On MOTION for Fiddler's Creek CDD #2 by Mr. Correia and seconded by Ms. DiNardo, with all in favor, authorizing Mr. DeMarco to conduct an inquiry regarding the trustee's use of funds was approved.**

Mr. Brougham voiced his concerns about the actions taken over the last two (2) years, on the advice of numerous lawyers, and that the Districts now find themselves in this position. He recalled discussions with Mr. Cole and questioning him, at the time construction funds were being removed, as to whether there were sufficient funds to complete the remaining projects. Mr. Brougham recalled that Mr. Cole told him there were sufficient funds, regardless of any monies that were taken. Mr. Cole indicated, a few years ago, he prepared a list of remaining work, which was agreed upon, to make the projects as whole as possible; however, there was future work that was planned but not included on the list. Mr. Cole recalled Mr. Brougham's question was whether there were sufficient funds to complete the work on the approved list, to which he indicated there were. In response to Mr. Brougham's question, Mr. Cole confirmed that response did not speak to future construction to complete the entire buildout of CDD #1.

Referring to comments made by others, Ms. Martinez Molina clarified that no foreclosure was commenced by the CDDs, they only started the process; however, the language in Dr. Fishkind's report states otherwise.

## **JOINT MEETING ITEMS**

### **TENTH ORDER OF BUSINESS**

### **Discussion: Intentions Regarding Procurement of Access Control Services**

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

Mr. Brougham indicated the Districts' rules previously required that the security services be bid; however, the rules were amended to remove the bid requirement. The current contract is set to expire and the Districts must determine if they will renew the current contract. Mr.

Brougham read Section 3.a., of the contract regarding the term of the current contract and the requirement that the Districts provide notice of their intention to renew to the contractor not less than 30 days prior to the next succeeding contract anniversary date.

Mr. Adams indicated Supervisor Scott excused herself from the meeting.

Mr. Garrett Cuttler, a resident, was in favor of renewing the current contract.

Mr. Joe May, a resident, felt the contract should be renewed.

Mr. Bill Klug, a resident, agreed.

Mr. Jesse Fritz, a resident, indicated, in general, the residents in his neighborhood are pleased with the current security services.

Ms. Janet Benedetti, a resident, agreed.

Another resident voiced his agreement.

Mr. Nick Carsello, a resident, indicated several residents contacted him and they are in favor of keeping the current contractor.

Mr. Brougham advised that numerous residents contacted him with only four (4) feeling the contract should go through the bid process.

Mr. Robertson explained that, under the current contract, the CDDs pay the contractor dollar-for-dollar, with no markup, for the services. He feels the District's have realized savings, since switching to this type of contract.

Ms. DiNardo, Mr. Correia and Mr. Robertson spoke in favor of renewing the contract. Mr. Robertson indicated only one (1) resident felt it should be bid.

Ms. Schmitt suggested, while this does not need to go out to bid, there are some things that could be done better and recommended the Boards meet with the security chief about ways to improve security. Discussion ensued regarding the current contract. Mr. Schutt felt the contract should be bid, as it is the second largest contract and the bids were lower than the contract price, the last time the contract was bid. Mr. Bergmoser spoke in favor of renewing the contract.

Mr. Curland indicated he is fine with the level of service provided; however, he is concerned that the service provided does not match the bid specifications. Discussion ensued regarding review of the service specifications.

**On MOTION for Fiddler's Creek CDD #1 by Mr. Brougham seconded by Mr. Bergmoser, with Mr. Slater in favor and Mr. Schutt and Mr. Curland dissenting, providing Fiddler's Creek Foundation with the required 30-day notice of the District's intent to renew the existing access control services agreement for an additional year, subject to the terms and conditions contained in the current contract and amendment, was approved. (Motion passed 3-2)**

**On MOTION for Fiddler's Creek CDD #2 by Mr. Robertson and seconded by Ms. DiNardo, with all in favor, providing Fiddler's Creek Foundation with the required 30-day notice of the District's intent to renew the existing access control services agreement for an additional year, informing of the District's desire for possible future revisions to the specification and subject to the terms and conditions contained in the current contract and amendment, was approved.**

Mr. Brougham directed Staff to set a date for a joint workshop during November or December, to review Mr. Curland's work and discuss the findings with the Fiddler's Creek Foundation.

Ms. Elysee Marshall, a resident, questioned how the Districts can know where they stand regarding cost, if they do not seek bids.

#### **ELEVENTH ORDER OF BUSINESS**

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

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

In response to a question, Mr. Adams advised that the checks related to the missed February, 2010 O&M were cut yesterday and mailed.

#### **TWELFTH ORDER OF BUSINESS**

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

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

For CDD #1, Mr. Cole presented Pay Draw 61, in the amount of approximately \$9,600, for work related to updating the South Florida Water Management District (SFWMD) certifications, bond balances, inspections and reduction of bonds in certain developments. Mr.

Brougham asked Mr. Cole to work with the developer and give the CDD #1 Board an estimate of costs for the total completion of the planned construction contained in the Engineer's Report. Mr. Brougham wondered how much is required to complete what is included in the Engineer's Report. Mr. Cole indicated it can be done but will take quite an effort. Mr. Cole detailed the completed work, to date, and the matter of some work not being included in the CDD costs. Mr. Brougham spoke of the construction fund and his concern that what remains will not be sufficient to complete the work they are obligated to finish. Mr. Adams reminded the Boards that the original analysis involved working with the bondholders to restructure the debt, prior to moving through the bankruptcy. Mr. Adams felt the projects were stopped with the thought that the remaining costs would be rolled into a future financing or become a developer contribution but this seemed to come off the table, when an agreement was not reached. Mr. Adams confirmed there are still real costs associated with completing the neighborhoods and additional phases of the areas covered by the various bond series; that is more than likely why they want the money back in the construction funds.

For CDD #2, Mr. Cole presented 2003 Bond Series Pay Draw 73, for \$480, related to preparing documents to convey the lakes from the developer to the CDDs. In response to a question, Mr. Pires confirmed this is related to obtaining the fee simple title to some of the lakes. Mr. Cole presented 2005 Bond Series Pay Draw 70, for approximately \$4,500, related to work coordinating completion of landscaping and monthly water monitoring by CDM.

Mr. Cole reported that payment on most of the pay draws is caught up, with the exception of the CDD #1 2005 Series bond, which has a pay draw that is approximately three (3) months past due. He felt the outstanding amount is between \$5,000 and \$10,000 and includes work related to monitoring and treatment of the wetland area and installation of the streetlights at the main entrance.

Mr. Cole indicated he provided packages to Mr. Adams, Mr. Pires and Mr. Mark Strain relative to the draft bid documents for the lake erosion. The lake erosion repairs for CDD #2 are estimated to be about \$250,000 and about \$1.6 million in repairs for CDD #1, with about \$600,000 of that being primarily high and medium priority areas. For both CDDs, he attempted to complete the highest priority areas first and, if possible, finish all of the lakes, when they are already working there. Mr. Cole anticipated sending the bid package out within the next few weeks and having a pre-bid meeting and obtain bids by November 2 and presenting the

information to the Boards at the November meeting. The plan is to start work in January, with completion by mid-June. Mr. Robertson asked Mr. Cole if he identified any lakes that would have difficult access or involve a lot of landscape destruction. Mr. Cole identified Lake 5, noting the best access is directly from the street, which would require temporary removal of landscaping to launch the boat into the lake; however, it would not be a large area. Mr. Cole confirmed landscaping will be restored.

Mr. Cole advised that three (3) phases, with the work areas within those phases, were identified and bids are being requested for each of the phases. In response to a question, Mr. Cole indicated all of the lakes need certification but there is not enough money budgeted to complete all of the work. He confirmed that, for CDD #2, once a lake is started, it will be completed; however, for CDD #1, there are some smaller areas.

In response to Mr. Robertson's question regarding negotiations with SFWMD to ensure the Districts do not receive a notice of violation during the remediation process, Mr. Cole advised that he had a telephone conversation with them and sent a draft letter to the developer, for review, prior to sending it to SFWMD.

**THIRTEENTH ORDER OF BUSINESS**

**Approval of August 24, 2011 Joint Public Hearings and Regular Meeting Minutes**

Mr. Adams presented the August 24, 2011 Public Hearings and Joint Regular Meeting Minutes and asked for any additions, deletions or corrections.

The following changes were made:

Line 36: Insert "(via telephone" after "Battista"

Line 37: Change "Darby" to "Darbut" and insert "Bondholder Representative (CDD #2)"

Line 42: Insert "Klug" after "Bill"

Line 43: Insert "Tony DiNardo" and "Gulf Bay Communities"

Line 44: Insert "Mark Strain" and "Gulf Bay Communities"

Line 100: Change "Bonita" to "Veneta (Amador)"

Line 113: Delete "sales" and insert "bond debt" after "revenue"

Line 221: Insert "Special" before "District"

Line 224: Change "An audience member" to "Mr. DiNardo"

Line 230: Change "recorder" to "appraiser"

Line 289: Change "trustees were" to "indenture trustee was"

Line 293: Insert "1999 since" before "2002"

Line 355: Change "Verona" to "Varenna"

Line 359 and 360: Insert "Klug" after "Bill"

**On MOTION for Fiddler's Creek CDD #1 by Mr. Schutt seconded by Mr. Curland, with all in favor, the August 24, 2011 Joint Public Hearings and Regular Meeting Minutes, as amended, were approved.**

**On MOTION for Fiddler's Creek CDD #2 by Mr. Robertson and seconded by Ms. DiNardo, with all in favor, the August 24, 2011 Joint Public Hearings and Regular Meeting Minutes, as amended, were approved.**

**FOURTEENTH ORDER OF BUSINESS**

**Other Business**

There being no other business, the next item followed.

**FIFTEENTH ORDER OF BUSINESS**

**Staff Reports**

**a. Attorney**

Regarding the Fifth Third foreclosure action, Mr. Pires advised that he has not received a response to his calls to their attorneys. He filed a simple answer and affirmative defenses trying to minimize costs to the Districts.

**b. Manager**

**i. NEXT MEETING DATE**

- **October 26, 2011 at 8:00 A.M. - CDD #1**
- **October 26, 2011 at 10:00 A.M. - CDD #2**

Mr. Adams indicated the next meetings will be held on October 26, 2011 at 8:00 a.m., for CDD #1 and at 10:00 a.m., for CDD #2.

Mr. Brougham reminded the Board that the public hearing will be held on October 28.

**c. Operations Manager**

Ms. Crismond presented the Operations Manager report. She reminded the Boards that the lake and wetland contract will expire on November 30, 2011. The pre-bid meeting is scheduled for October 5, 2011 at 1:00 p.m., and Management has requested an updated map to include the Belle Meade portion of the property.

Ms. Crismond indicated that CDD #2's landscape contract will expire on November 30, 2011 and the pre-bid meeting is scheduled for October 5, 2011 at 9:30 a.m.

Ms. Crismond is currently obtaining quotes to replace a royal palm tree in CDD #2, which was struck by lightning, along with a coconut palm that died during last winter's freeze. Installation of CDD #1's annuals is scheduled for the end of October.

Ms. Crismond reported several sidewalk areas and monuments, throughout the community, that require pressure cleaning. Management is in the process of obtaining quotes to have the work completed in the next few weeks. The patrol statistics were included in the report and Ms. Crismond noted that fountain repairs/major maintenance event on the Venetta fountain is underway.

Mr. Brougham requested that the sheriff's department be asked to rotate or expand their patrol areas to other streets, within the community, beyond the main streets. Mr. Robertson remarked about cars parked in the fire lane and asked the Foundation to do something to rectify the problem.

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

**SIXTEENTH ORDER OF BUSINESS**

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

Mr. Adams presented the Unaudited Financial Statements as of August 31, 2011.

Mr. Brougham noted difficulty in reconciling the amounts listed on the 'due from other funds' line item, on Page 1, and the liabilities line items. He questioned if \$278,483 is due to the CDD's general fund from the debt service and general fund 2. He referred to the \$175,522 amount listed under liabilities, on the 'due to other funds' line item and asked if that is what will flow out of payment of taxes. Mr. Adams replies affirmatively and explained the receipt and distribution of the funds. Mr. Brougham asked that a spreadsheet, detailing the 'due to' and 'due from', be included in the next agenda. Mr. Brougham questioned the lag time on receiving the



monthly off-roll payments from the developer. Mr. Adams felt the monies are typically received a few days after the close of the books, which is why they are always a month behind on the financials. A Board Member asked why balances are still being shown in the hurricane fund. Mr. Adams replied fund 2 has funds available and noted those will be credited back to those properties for which it was not paid off early.

Discussion returned to Mr. Brougham's concerns about the legal advice the Districts received over the past two (2) years and their current predicament. The irony of the bondholders using the CDD funds to sue the CDDs was noted.

<b>SEVENTEENTH ORDER OF BUSINESS</b>	<b>Audience Requests</b>	<b>Comments/Supervisors'</b>
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There being no audience comments or Supervisors requests, the next item followed.

<b>EIGHTEENTH ORDER OF BUSINESS</b>	<b>Adjournment: Fiddler's Creek CDD #1</b>
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<p><b>On MOTION for Fiddler's Creek CDD #1 by Mr. Brougham and seconded by Mr. Curland, with all in favor, the meeting adjourned.</b></p>
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**FIDDLER'S CREEK CDD #2 ITEMS**

<b>NINETEENTH ORDER OF BUSINESS</b>	<b>Consideration of Resolution 2011-7, Amending the Debt Service Fund Budgets for Fiscal Year 2011</b>
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Mr. Adams presented Resolution 2011-7 for the Board's consideration. He explained, as a result of the Board approving the revised lien rolls at the last meeting, which became effective immediately, it became necessary to revise the Fiscal Year 2011 budget. The primary revisions involve the revenue section, because the collection method for some of the assessments moved from on roll to off roll.

**On MOTION for Fiddler's Creek CDD #2 by Mr. Robertson and seconded by Ms. DiNardo, with all in favor, Resolution 2011-7, Amending the Debt Service Fund Budgets for Fiscal Year 2011, was adopted.**

**TWENTIETH ORDER OF BUSINESS**

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

Mr. Adams presented the Unaudited Financial Statements as of August 31, 2011. He indicated that the revenues to expenditures are out of whack due to the legal foreclosure expense; however, the District has a transfer of funds from the various bond issues to cover the majority of the expense. Mr. Adams advised that the operating funds continue to decrease and the District is getting gravely close to running out of money; however, they have a catch up of revenue coming in from the 2010 off roll assessments and the developer's arrearage. Mr. Adams felt those funds will get the District through the next month.

Regarding the on-roll arrearage and now that the reorganization plan is confirmed, Mr. Adams reported that a special tax certificate sale is possibly being arranged.

**TWENTY-FIRST ORDER OF BUSINESS**

**Audience  
Requests**

**Comments/Supervisors'**

Mr. Elliott asked how much CDD #2 has paid to the bondholders for their legal fees. Mr. Adams indicated the current year amounts, through the end of August, are \$1.2 and \$1.4 million for CDD's #1 and #2, respectively. He estimated the cumulative total, including the previous fiscal year, is in excess of \$3 million. Mr. Adams reviewed the due from developer figures.

Ms. Schmitt asked if CDD #2 is included in the public hearing on October 28, 2011. Mr. Adams replied affirmatively. Ms. Schmitt asked Mr. Pires if he received payment from the bondholders. It was noted that payment was authorized.

Ms. Martinez Molina indicated there are two (2) appeals pending and the 2003 Series appealed separately and apart from the rest of the bond series. She explained actions that happened and noted some of the related property is actually now part of the 2005 Series, although the plan still calls for the treatment of it as the 2003 Series. She confirmed the basis of the appeal is strictly to determine the factual discrepancies and has nothing to do with how the

**FIDDLER'S CREEK CDD #1 &  
FIDDLER'S CREEK CDD #2**

**September 28, 2011**

assessments were treated and/or how the Board voted. Ms. Martinez Molina felt this can be resolved by a simple filing on behalf of the debtors.

**TWENTY-SECOND ORDER OF BUSINESS    Adjournment: Fiddler's Creek CDD #2**

**On MOTION for Fiddler's Creek CDD #2 by Mr. Robertson and seconded by Ms. DiNardo, with all in favor, the meeting adjourned at 11:45 a.m.**

**FIDDLER'S CREEK CDD #1 &  
FIDDLER'S CREEK CDD #2**

**September 28, 2011**

**FOR FIDDLER'S CREEK #1:**

  
Secretary/Assistant Secretary

  
Chair/Vice Chair

**FOR FIDDLER'S CREEK #2:**

  
Secretary/Assistant Secretary

  
Chair/Vice Chair