

**MINUTES OF MEETING  
FIDDLER’S CREEK COMMUNITY DEVELOPMENT DISTRICT #1**

A Continued Public Hearing and a Regular Meeting of the Board of Supervisors of the Fiddler’s Creek Community Development District #1 was held on **Wednesday, November 16, 2011 at 8:00 a.m.**, at the **Fiddler’s Club and Spa, 3470 Club Center Boulevard, Naples, Florida 34114.**

**Present at the meeting were:**

Phil Brougham	Chair
James Curland	Vice Chair
Gerald Bergmoser	Assistant Secretary
Jim Schutt	Assistant Secretary
Robert Slater	Assistant Secretary

**Also present were:**

Chuck Adams	District Manager
Cleo Crismond	Operations Manager
Terry Cole	District Engineer
Tony Pires	District Counsel
Alice Carlson	AJC Associates
Aleida Martinez Molina (via telephone)	Weiss Serota, Special Counsel CDD #1
Amy Lowen (via telephone)	IT Counsel
Mike Williams (via telephone)	Bond Counsel
Hank Fishkind (via telephone)	Financial Advisor
Paul Battista (via telephone)	Debtor’s Counsel
Steve Goldberg (via telephone)	MunieMae Counsel
Chris Wiebeck (via telephone)	MunieMae

**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, Schutt, Slater and Bergmoser were present, in person.

**SECOND ORDER OF BUSINESS**

**Public Hearing to Consider Resolutions Relative to the Adoption of Revised Supplemental Assessment Methodologies, Revised Assessment Rolls and the Imposition of Special Assessments on Certain Specially Benefitted Lands within the District to Secure Special Assessment Revenue Bonds, Series 2002A, Series 2002B and Series 2005; Providing a Severability Clause; and Providing an Effective Date**

Mr. Adams recalled the District receiving a letter of objection from Mr. Steve Goldberg, representing MunieMae. He stated he asked Dr. Fishkind to review the letter and be prepared to address the issues raised by Mr. Goldberg directly.

Mr. Brougham asked Dr. Fishkind if he had reviewed the letter in question.

Dr. Fishkind responded affirmatively. He stated he understands Mr. Goldberg's concerns and believed Ms. Alice Carlson's response clearly explains the matter. He noted the issue is how to allocate a series of those bonds. The first option of allocating them to one (1) bond issue is impractical. The second option, a proportionate approach, is a reasonable alternative but he believed Ms. Carlson's approach to be more practical, in terms of implementing. He recommended Ms. Carlson's approach to the Board.

Mr. Brougham asked Ms. Carlson to summarize her methodology, as an option.

Mr. Pires believed the letter was related to CDD #2. Mr. Adams responded there were two (2) letters, with a letter addressed to CDD #1. Mr. Brougham requested an actual reading of the letter, for the benefit of the Board.

A Board Member noted Mr. Goldberg's letter was included in the agenda.

Mr. Schutt stated he read Mr. Goldberg's letter and they are challenging an assertion in Dr. Fishkind's modified assessment, relative to language that was not in the bond offering, according to Mr. Goldberg. He asked Dr. Fishkind if the allegations were correct and, if correct, can the information be restated the way it was in the bond offering. Mr. Schutt asked why the Board cares which way it is.

Dr. Fishkind stated it was discussed, at great length, at the last meeting. He recalled explaining to Mr. Goldberg the three (3) reasons why our process and recommendation are appropriate. Dr. Fishkind stated Mr. Goldberg was correct in the first bond offering, there was

no first in, first out language; however, the first in, first out (FIFO) method is the only way to provide an effective true-up test. One has to be able to allocate the bonds to property, as they are platted, or the true-up test is meaningless. The true-up test is what protects the bondholders and the Board. Such is a common practice throughout the state and this issue was completely litigated in bankruptcy court. The bondholders' experts agreed with the FIFO method.

Dr. Fishkind respectively disagreed with Mr. Goldberg and recommended the District proceed as outlined in his report.

Ms. Aleida Martinez Molina recalled that Mr. Goldberg's letter stresses that the issue is a legal matter and Dr. Fishkind is not an attorney. She stated the method that is being implemented is a common practice in the state and has already been approved in the bankruptcy process. She further pointed out that Mr. Goldberg is not an attorney in Florida.

Mr. Steve Goldberg responded his point is about facts. He believed there is considerable evidence that the allocations are not being handled properly. He believed the Board needs to further explore the allocations.

Ms. Alice Carlson stated she did not reply to the CDD #1 letter, as it was not received until today. She reported the lands in the 2002 and 2005 bond issues are not platted and are being allocated on a per acre basis. She believed that Dr. Fishkind's report addresses what will happen in the future.

Mr. Brougham explained the Board has two (2) resolutions to consider, each related to a different bond series.

Mr. Pires stated he has some minor clarifications and corrections to the resolutions. On Page 5 of 11, of the Supplemental Assessment Methodology, third line, first paragraph, the number reflecting the ceiling debt per acre is \$158,000, as shown in Table 3, but the number in Table 3 is \$155,000. Dr. Fishkind stated it will be corrected and the correct number is \$155,000.

Mr. Pires suggested additional language to Paragraph G, at the bottom of Page 3, be added to include today's continued meeting.

Mr. Tony DiNardo stated the remaining property to be platted is a narrow piece. The way the road must be finished and the way the allocation will work, is going to follow an order. The platform method will happen by default. If platted simultaneously, it will all be allocated at one time or, as the road of development is completed, it will fall in to the FIFO method recommended by Dr. Fishkind.

Mr. Schutt asked Mr. Goldberg how he proposed the area be allocated if FIFO is not acceptable.

Mr. Goldberg explained that he is not opposed to FIFO for District #2 but he does not believe it has been properly applied to the first block.

Mr. Schutt asked how Mr. Goldberg proposed to allocate the area in CDD #1.

Mr. Goldberg believed that the meeting was for CDD #2.

Mr. Brougham explained that the meeting was for CDD #1 and asked for a response.

Mr. Chris Wiebeck, with MuniMae, explained that, from their view, the total outstanding bond debt on the 2002 and 2005 series allocate a portion of it to each platted lot so that there would be an equal lien.

Mr. Brougham asked for any comments from Mr. Battista.

Mr. Battista stated, on behalf of the organized debtors, he supported Dr. Fishkind's analysis.

Mr. Schutt stated it sounds as if he was in favor of adopting FIFO because he said, as it is platted, a proportionate amount of the 2002 and 2005 debt is applied to the platted lots. He stated they are platted successively.

Mr. Wiebeck explained that right now, there is an equal lien across all the land, 2002 and 2005. When something is platted, FIFO means it would all go to the first bond issuance (2002) until fully allocated and then one would go to 2005. Mr. Wiebeck explained that he is proposing that the first time something is platted, both 2002 and 2005 debt would be allocated.

Mr. DiNardo believed that MuniMae is trying to give the 2005 bonds an advantage over the 2002 bonds.

Dr. Fishkind explained it will not work because one is looking backwards; the District started issuing bonds with the idea that future bonds would be issued. It does not work as a practical matter.

Mr. Schutt stated he understands the math but not the process. He noted that every piece of property benefits from Fiddler's Creek Parkway and Championship Drive; therefore, every piece of property, platted or unplatted, benefits by the money spent to build the Parkway. He noted he is hearing that such is not the case and the Parkway was built with bond series 1999, whose monies were allocated to the first platted lots; thus, there are some properties that show no debt burden as a result of Fiddler's Creek Parkway. He asked if he understood it correctly.

Dr. Fishkind stated the understanding was not correct and all parties benefited from Fiddler's Creek Parkway, as described. The total cost of the expected improvement program is allocated to all the properties. Separate and apart, the first bonds are issued with a plan but no guarantee that everything is going to proceed as expected. Standing in 1999 or 2001, when a property is platted, it is given a full complement of cost as if the whole system is built, thereby satisfying the requirement that all properties will benefit from the system. As a practical matter, there is only one (1) issue of bonds outstanding so they have to allocate the debt, for that particular issue, to the platted lots.

Dr. Fishkind explained that the cost of Fiddler's Creek Parkway, and all of the other improvements, according to the adopted capital improvement plan, are counted in terms of the debt that is allocated to the initial properties and debt that is allocated to the future properties.

Mr. Brougham explained the capital improvement plan was developed, initially, as a look into the future as to what capital infrastructure would be needed.

Mr. Schutt believed that, in following the FIFO method, there is still 1999 bond debt that is not recoverable until the property that shares the debt is platted.

Dr. Fishkind stated such would be true if the proportionate method was used and the District would need to guarantee that the future improvements were built at the initial expected cost. He believed such method involved too much uncertainty for the separate task of platting and allocating debt.

Mr. Bergmoser stated according to the minutes of the last meeting, he believed a legal opinion was going to be obtained from Mr. Williams' firm.

Mr. Adams stated he requested that Mr. Williams review the information and provide a legal opinion. He explained that Mr. Williams did not provide an opinion but recommended that the District rely strongly on Dr. Fishkind's testimony.

Mr. Williams agreed and stated he reviewed the language and recommended Dr. Fishkind's recommendation, as he has spent many hours on the issue.

Mr. Bergmoser stated he can make an assumption, from what Mr. DiNardo said, that this is a grab by the 2005 bondholders to get their bonds collateralized sooner than they might. He asked if such was a correct assumption.

Mr. Goldberg explained it was not and explained that there were two (2) different reports proposed on the same day, related to different series. He noted that the FIFO method was

accepted for CDD #2. He stated he is following the documents by which the bonds were offered, which they spent the money to buy.

Mr. Schutt noted it is the bondholders' money.

Mr. Pires clarified that part of the process includes a declaration of acknowledgement/consent for the property owner, drafted by Mr. Williams.

Mr. Williams reported the document was prepared and stated he can forward it to Mr. Adams.

Mr. Brougham noted the key point that stands out in his mind is that the methodology was thoroughly reviewed in bankruptcy court, over a series of days, with many different expert testimonies. There is a confirmed bankruptcy plan that, from his point of view, endorsed moving forward with the revised allocation of bond debt and revised supplemental methodology.

- **2012-1 (Series 2002A & 2002B)**

**On MOTION by Mr. Brougham and seconded by Mr. Curland, with Mr. Bergmoser and Mr. Slater in favor and Mr. Schutt dissenting, Resolution 2012-1, as amended and including the Revised Supplemental Assessment Methodology, as amended, was adopted. (Motion passed 4-1)**

- **2012-2 (Series 2005)**

Mr. Brougham read Resolution 2012-2, relating to bond series 2005, into the record.

**On MOTION by Mr. Brougham and seconded by Mr. Slater, with Mr. Bergmoser and Mr. Curland in favor and Mr. Schutt dissenting, Resolution 2012-2, as amended and including the Revised Supplemental Assessment Methodology, as amended, was adopted. (Motion passed 4-1)**

**THIRD ORDER OF BUSINESS**

**Other Business**

There being no other business, the next item followed.

**FOURTH ORDER OF BUSINESS**

**Audience Requests**


**Comments/Supervisors'**

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

**FIFTH ORDER OF BUSINESS**

**Adjournment**

**On MOTION by Mr. Brougham and seconded by Mr. Bergmoser, with all in favor, the meeting adjourned at 8:33 a.m.**

  
Secretary/Assistant Secretary

  
Chair/Vice Chair