

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

A Regular Meeting of the Board of Supervisors of the Fiddler's Creek Community Development District #1 was held on **Wednesday, January 25, 2012**, immediately following the Joint Access Control Specifications Workshop 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:

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	Assistant Regional Manager
Tony Pires	District Counsel
Terry Cole	District Engineer
Aleida Martinez Molina (via telephone)	Weiss Serota, Special Counsel CDD #1
Tony DiNardo	Developer – Gulf Bay
Mike Charbonneau	Foundation-Director of Safety
Ron Albeit	Foundation

FIRST ORDER OF BUSINESS

Call to Order/Roll Call

Mr. Adams called the meeting to order at 8:26 a.m., and noted, for the record, that all Supervisors were present, in person.

SECOND ORDER OF BUSINESS

Update: Bankruptcy Proceedings – Aleida Martinez Molina

Ms. Martinez Molina reported that the appeal is ongoing. Briefs were recently filed on the technical issues regarding whether US National Bank has standing to bring an appeal or any involvement. These are technical and procedural arguments with the court asking the District for additional clarification on the issue of US National Bank's standing. She indicated there was a

joinder by Fifth Third Bank supporting the position that US National Bank does not have standing and that Fifth Third Bank did not consent to standing. Ms. Martinez Molina explained the District is still at the very beginning of the appeal; if the court agrees with the District, the appeal could be dismissed but, if not, all parties must file more papers supporting their various positions. She advised that this is an academic process, at this point, because the plans are all consummated or in the process of being consummated.

Ms. Martinez Molina indicated the debtor recently filed their post confirmation report confirming they are insured and everything is status quo.

Mr. Brougham stated he appreciates Ms. Martinez Molina's efforts over the last 18 months; however, he feels they are now at a stage, where, given the state of the bankruptcy, its momentum and any impacts on CDD #1, there is no need to spend further legal dollars to have her monitor the bankruptcy proceedings. He believed if anything happens, Mr. Adams will be advised of it and, if necessary, bankruptcy counsel could be called upon. Mr. Brougham indicated a tremendous amount of money was spent on this and he is trying to curtail the spending. Mr. Pires suggested setting a per-month time limit of three (3) hours. Ms. Martinez Molina recapped the scope of her monitoring work and voiced her opinion that billing, in the past month, was very limited. Mr. Schutt indicated the District had \$30,000 in legal bankruptcy expenses in December. Mr. Adams clarified the District paid \$30,000 worth of invoices in December; however, many of those were invoices from prior months. Mr. Adams noted the revised assessment methodology required a lot of involvement by bond counsel and bankruptcy counsel. Their expenses were generated in September, October and November and billed in the October – November time frame. At the same time, the District was experiencing a cash flow issue, resulting in a delay of payment until December. Mr. Adams confirmed that the outstanding legal expenses are now current. Mr. Schutt asked if the District is considering costs for less than three (3) hours per month for Ms. Martinez Molina to continue monitoring. Mr. Slater felt the District should retain Ms. Martinez Molina's monitoring services.

******Ms. Martinez Molina left the meeting.******

THIRD ORDER OF BUSINESS**Developer's Report/Update**

There being no developer's report or update, the next item followed.

FOURTH ORDER OF BUSINESS

**Consideration of Resolution 2012-4,
Adopting the Revised Engineer's Report
for Series 2005 Bond (*Resolution to be
provided under separate cover by Bond
Counsel*)**

Mr. Adams indicated Resolution 2012-4 was reviewed by himself, District Counsel, Bond Counsel and the District Engineer, all of which find it to be in order. A copy will be provided to the Board.

Mr. Brougham voiced his opinion that documents should be provided to the Board prior to the meetings, as he is not comfortable with being provided documents at the meeting and then trying to make a decision, at that time. He noted this has been a repeated issue and asked the Board to consider setting a policy requiring that documents to be considered for approval must be included in the agenda package.

Given Mr. Brougham's comments, Mr. Adams asked the Board if they wished to defer Items 4 and 5 to the February meeting, as neither is critical, at the present time. Mr. Brougham indicated his desire to discuss the lake bank erosion matter today. Mr. Brougham wished to defer further discussion of Item 4 to later in the agenda.

Mr. Brougham reiterated his request that, going forward, unless it is an emergency, documents to be considered must be included in the Agenda package; otherwise, the Board will not address the items. Mr. Adams agreed to Mr. Brougham's request.

FIFTH ORDER OF BUSINESS

**Consideration of Award of Lake Bank
Erosion Repair contract to Anchor
Marine Services**

Mr. Cole apologized for not providing the Board with the contract documents sooner; however, he only received the completed documents from the contractor on Monday. He reported that one (1) bid was received.

Mr. Cole recalled that no bids were received when the project first went out to bid. Contractors were concerned about the project being in three (3) phases and requiring them to maintain their bonding capacity for three (3) years, which would limit their bonding capacity for other projects. As a result, the work was rebid a few weeks ago. Anchor Marine Environmental Services, Inc., submitted a bid which was consistent with the Mr. Cole's estimates. The bid is

\$161,885. Mr. Cole noted the District approved a \$200,000 budget for this project and, with the bid amount of \$161,885, a technical services and contingencies amount of \$38,115 is left. The prices are in line with the estimates and contingency amounts, and leave room for unanticipated repairs discovered while work is in progress. In response to Mr. Brougham's question, Mr. Cole recommended the Board authorize him to make those types of decisions, rather than requiring approval from the Board. Mr. Brougham felt it was an interesting coincidence that the proposal and contingency figures add up to the exact amount budgeted for the project. Mr. Cole explained that the proposal is \$161,885 and he mathematically calculated the contingency amount as the difference between the budgeted and proposed amounts. Mr. Brougham asked Mr. Cole the percentage of engineering fees included in the total. Mr. Cole confirmed he will need to check; however, they budgeted 10% but have spent more than 10% on this single phase because they had to expend all of the design money for the entire \$2 million project. The percentages are off because of the job. Mr. Brougham indicated he is asking because the engineering fees were discussed at a previous meeting and Mr. Cole's boss advised that he would give the District a favorable rate. Mr. Cole indicated they have only billed time and materials and have taken extensive efforts to design the project, conduct the bidding, produce the addendums and rebid it. Mr. Brougham acknowledged Mr. Cole's response but indicated he feels he must test him because he feels there is too much of a coincidence that the bid amount and contingency equal the budgeted amount. Mr. Cole reiterated that the contingency amount was derived from subtracting the bid amount from the budgeted amount. Mr. Cole explained that there are contingency funds remaining; however, having a contingency allows wiggle room in the event additional repairs are necessary. Mr. Cole stressed that unnecessary work will not be completed just because there is contingency money.

Mr. Brougham asked the timeframe for completion of the project. Mr. Cole indicated the bid bond, which is 5% of the bid amount, along the certificate of liability insurance, as revised, were received. Mr. Pires confirmed he reviewed the contract documents. Mr. Cole indicated the contractor license was received and he contacted all four (4) references and spoke to one (1). Mr. Cole referred to the contract and obtaining signatures. Once the contract is signed, Mr. Cole felt work would commence in mid February and be completed by mid June.

Mr. Pires referred to correspondence section of the bid and asked that Paragraph 7.3.1 be deleted. Mr. Cole indicated he reviewed the request and does not have a problem with it. At Mr.

Pires' request, Mr. Cole explained that the item deals with soil gradation related to the material pulled from the bottom and put into the geotube. Mr. Cole feels the contractor's terms and specifications are standard in the industry.

Mr. Pires indicated he performed a legal check of Anchor Marine and found a federal court case from 2005 involving a near drowning of a 16-year old minor working as a diver. The case was settled. He is awaiting confirmation of insurance.

Mr. Pires recalled discussion about requiring all employees be over the age of 25 or be adults. Mr. Cole indicated 18 is the legal age of adulthood but Anchor Marine's references and resumes show the employees to be over 25. Mr. Pires indicated, regardless, the District can require that to be in the contract. He felt the District does not want to be in a position to allow teenagers to be in the water.

In response to a question, Mr. Cole confirmed that the Board's decision today has no contractual impact on CDD #2's decision; however, logistically, it would be better if both projects are completed at the same time. He indicated that, when the work is being performed, the contractor will provide a schedule, which will allow the District to notify residents.

Mr. Bergmoser asked if the contract has a 15-year warranty. Mr. Cole replied affirmatively.

On MOTION by Mr. Brougham and seconded by Mr. Curland, with all in favor, the Anchor Marine Environmental Services, Inc., contract and directing Staff to proceed with the necessary paperwork, conditioned upon adding language to the contract specifying that all persons working on the project are of adult age, was approved.

Mr. Brougham asked Mr. Cole to notify Mr. Adams, should work begin prior to the next meeting.

- **Consideration of Resolution 2012-4, Adopting the Revised Engineer's Report for Series 2005 Bond (Resolution to be provided under separate cover by Bond Counsel)**
*****Discussion of the Fourth Order of Business resumed.*****

Mr. Cole indicated the draft Revised Engineer's Report was included in the Agenda package but the resolution was pending from Bond Counsel.

Mr. Adams indicated Resolution 2012-4 is a very simple resolution; it provides for acceptance of the report, the date of completion and any conflicts. Mr. Cole referred to the first paragraph on Page 2, noting it addresses the Date of Completion certificate and the District's ability to use any available funds to construct or improve projects, as discussed at the previous meeting.

On MOTION by Mr. Schutt and seconded by Mr. Slater, with all in favor, Resolution 2012-4, Accepting the Final District Engineer's Report for Phase 4, was adopted.

Mr. Schutt indicated there are numerous rounding errors in the report. Mr. Cole assured him he will review it and make the necessary corrections.

Mr. Cole reviewed the changes made to the report since 2005, including amendments, over the years. Page 3 describes the community and no changes were made. Page 5 is a land use table showing the types of use. He indicated that Paragraph 1, of Page 6, states, as of January 11, 2012, the total expenditures and funds remaining to be expended to complete the previously approved bondholder approved work list amounted to approximately \$9.4 million dollars. The bottom paragraph indicates construction in Phase 4 is approximately 60% completed based upon the work originally planned in the Series 2005 Bond. Certain portions of the planned work were deleted in anticipation of revisions to the planned scope of infrastructure resulting from developer financial issues, unfavorable economic conditions, as well as the application of bond funds by the indentured trustee to uses other than for construction related purposes. Presently, approximately \$65,000 of work remains to be completed from the reduced scope. He detailed the primary items to be completed. The paragraph concludes on Page 7, stating that if additional monies become available, at the District's option, additional construction of infrastructure may occur.

Mr. Brougham asked how much of the \$65,000 worth of remaining work the District had agreed to fund from its general fund. Mr. Cole felt it was about \$25,000 to \$30,000, primarily related to maintaining the permitting.

Mr. Cole indicated final engineer's reports were completed when Phases 1, 2 and 3 were closed out. The Phase 3 report contained language stating any uncompleted work would move forward to Phase 4; meaning, there are certain projects that were completed in Phase 4.

Mr. Cole reviewed the map on Page 8 and gave a brief history of the District's historical boundaries. Page 9 contains the phase plan. Pages 10 and 11 describe the existing infrastructure before beginning work. Page 12 details the individual Phase 4 construction items. Regarding Phase 4, Mr. Cole explained that the roadways are non-CDD owned and the utilities to provide services to the future tracts are considered CDD property. When the uncompleted Phase 3 work was taken over, certain other roadwork areas were added to the Phase 4 project, including restriping Championship Drive, installing handicap-warning mats at sidewalk crossings, miscellaneous roadway items for final acceptance of Club Center Drive and the addition of sidewalk connections along Championship Drive.

Mr. Cole referred to Item 3.2 Utilities and explained that construction ceased on certain projects within Phase 4 and, at this time, approximately 70% of the planned utilities with the future Phase 3, Unit 3 and Phase 6, Unit 1 project areas are completed. He identified those areas showed where the work stopped. The report notes that, as such time that work resumes on these particular projects, it is anticipated the water and wastewater facilities will be conveyed by CDD 1 to the Collier County Water - Sewer District.

Referring to Page 13, Mr. Cole indicated most earthwork and clearing has been completed; however, there are three (3) lakes around and adjacent to the two (2) future development tracts, for which work was not completed. Those areas are also referenced in the stormwater management section, on Page 14.

Mr. Cole indicated that, for the most part, the District is current on payment of all pay draws.

Mr. Cole briefly reviewed Items 3.6 through 3.9 on Page 15.

Mr. Brougham asked if this finalizes the engineer's report. Mr. Cole replied affirmatively. Mr. Brougham asked, if monies become available in the future and there were agreements to go forward to complete the infrastructure, what action the District would need to take. Mr. Adams indicated they would need to prepare a revised report.

Mr. Cole reviewed Pages 16 and 17 containing a description and summary of costs table of the individual components of the infrastructure work. He indicated that another sentence must be added to the end of the second paragraph, on Page 16, to state, "the technical services expenses also included construction bond funding, developer management fees and other related soft costs", because there were other costs above just consulting and design fees.

Regarding Page 17, a Board Member asked if Phase 4 is the only one that has non-construction related legal expenses. Mr. Cole referred to the last third and fifth paragraphs on Page 16, as related to the non-construction legal expenses that were from the construction fund. The Board asked that the exact amount of general fund monies approved by the Board be included on Page 16.

Mr. Cole reviewed Tables 2 and 3, on Pages 17 through 27 and explained the figures. Page 28 details the permits related to Phase 4, along with a notation that additional permits are needed for the uncompleted and unfunded work items within Phase 4 and a statement that, if additional construction monies become available, at the District's option, additional infrastructure permitting may occur.

Mr. Pires advised that a new motion will be necessary, since Resolution 2012-4 accepted the Engineer's Report but it has now been amended.

On MOTION by Mr. Brougham and seconded by Mr. Curland, with all in favor, rescinding adoption of Resolution 2012-4, Accepting the Final District Engineer's Report for Phase 4, was approved.

On MOTION by Mr. Schutt and seconded by Mr. Brougham, with all in favor, Resolution 2012-4, Accepting the Final District Engineer's Report for Phase 4, as amended, revised and presented by Mr. Cole and including the comments by Mr. Schutt, was adopted.

SIXTH ORDER OF BUSINESS

Engineer's Report

Mr. Cole presented Pay Draw #65, related to the 2005 Series bond, for \$1,871.25 related to preparation of the engineer's report that was just approved and providing documentation to Mr. Pires regarding the status of the bondholders approved work items. He confirmed these are not the complete costs related to the report; they are the initial costs. Mr. Brougham asked if CDD #1 has taken all necessary action with regard to the bankruptcy. Mr. Adams confirmed but noted Management must now adjust the amortization schedules.

SEVENTH ORDER OF BUSINESS

**Consideration of Required Actions
Resulting from Access Control
Specifications Workshop**

Mr. Adams requested the Board consider a motion directing Staff to continue with the barcode program only for staff of The Foundation and The Rookery. All others will continue to use remotes.

On MOTION by Mr. Curland and seconded by Mr. Brougham, with all in favor, continuation of the barcode access program only for The Foundation and The Rookery staffs, was approved.

EIGHTH ORDER OF BUSINESS

**Consideration of AJC Associates, Inc.,
Indemnification Agreement**

Mr. Pires indicated AJC Associates, Inc., has agreed to execute the Indemnification Agreement.

In response to Mr. Brougham's question, Mr. Pires confirmed that, to date, no fees, penalties or expenses have been incurred related to errors made to the lien roll by Ms. Carlson. Mr. Pires confirmed there is no time limit on the agreement; however, there is a statute of limitations with regard to professional negligence. Mr. Pires explained that, while the agreement goes back to 2005, the errors were just discovered last year; therefore, the statute of limitations begins running at the time they were discovered.

On MOTION by Mr. Slater and seconded by Mr. Curland, with all in favor, the AJC Associates, Inc., Indemnification Agreement and authorizing the Chair to execute, on behalf of the District, was approved.

NINTH ORDER OF BUSINESS

**Presentation: Analysis of Front Gate
Study [Ron Albeit] *(to be provided at
meeting)***

Mr. Brougham recalled that Mr. Turner requested consideration of adding additional resources at the front gate to handle work overloads. Mr. Albeit detailed a weeklong traffic

study with the purpose of determining the traffic, call and queue volume at the main gate. The scope of the study was comprised of vehicles that accessed and were recorded, via the gatehouse software, the incoming telephone calls to the main gate, calls from the Championship Drive call box and vehicles in the queue awaiting entry. The study revealed that the peak traffic and call volume, at the main gate, paralleled each other during hours of 10:00 a.m., and 2:00 p.m. The conclusion is that lack of use of the automated attendant system was what greatly increased the volume of calls to the main gate and caused an increase in missed calls and the wait time for cars in the queue. Recommendations include reminders to residents to use the automated system, along with instructions on how to use it. The officer on duty is to also verbally provide information to those still using the direct dial system.

Mr. Brougham asked if incoming calls to the automated system could be monitored, to determine if it is being utilized. Mr. Albeit indicated he would need to check and further detailed the results in the study.

Regarding recommendations, Mr. Charbonneau noted part of the problem is that the community directs guests and such to that gate to obtain access and, as it is the only access point, the only thing another person would be able to do is answer the phone. He felt the community should direct residents to utilize the auto attendant, rather than speaking to a person. He discussed the process for informing residents, who call, how to use the auto attendant system.

Mr. Brougham asked the cost to add a person to answer phone calls and the benefit of doing so. If a person were to be added, Mr. Albeit recommended four (4) hours per day, five (5) days per week. Mr. Albeit felt that a better consideration would be implementation of an answering system for when the gate attendant is busy with vehicles.

******The audio recording ended. The remainder of the meeting was transcribed from meeting notes and reports.******

TENTH ORDER OF BUSINESS**Approval of Minutes**

- **December 14, 2011 Joint Access Control Specifications Workshop**

Mr. Brougham presented the December 14, 2011 Joint Access Control Specifications Workshop Minutes and asked for any additions, deletions or corrections.

On MOTION by Mr. Brougham and seconded by Mr. Curland, with all in favor, the December 14, 2011 Joint Access Control Specifications Workshop, as presented, were approved.

- **December 14, 2011 Regular Meeting**

Mr. Brougham presented the December 14, 2011 Regular Meeting Minutes and asked for any additions, deletions or corrections. The following changes were made:

Lines 26 and 357: Change "Lare" to "Lirot"

Line 40: Insert "proposed" after "closed"

On MOTION by Mr. Bergmoser and seconded by Mr. Slater, with all in favor, the December 14, 2011 Regular Meeting Minutes, as amended, were approved.

ELEVENTH ORDER OF BUSINESS

Other Business

There being no other business, the next item followed.

TWELFTH ORDER OF BUSINESS

Staff Reports

a. Attorney

There being no report, the next item followed.

b. Manager

i. Unaudited Financial Statements as of December 31, 2011

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

ii. NEXT MEETING DATE: February 22, 2012 at 8:00 A.M.

Mr. Adams noted the next meeting is scheduled for February 22, 2012.

c. Operations Manager

Ms. Crismond presented the Monthly Field Operations Status Report. She indicated that Management toured the lakes on Monday, December 19. Littorals, which were sprayed over and have since died, will be replaced, once all bull rush has been removed.

Regarding landscaping, Ms. Crismond reported that all plantings were treated for white fly and are being monitored. Management has instructed TruGreen to edge along the sidewalk

areas abutting the developer lots and spray the weeds growing into the edge of the roadway along Mahogany Bend. She discussed the failure of two (2) pump drives in the new pump house and the replacement of both. She noted that FPL installed recording devices at both pump station transformer boxes to obtain data to determine if the transformer boxes need replacement. The recordings also showed that FPL's service to the pump stations is within operating standards and no problems were found during the voltage-recording period.

Management is in the process of obtaining quotes to pressure clean all CDD sidewalks and curbing. To date, only one (1) bid has been received.

Regarding patrol services, Ms. Crismond indicated that, as of Friday, January 20, there were 28 stops; 24 issued to residents, three (3) to guests and one (1) vendor. Five (5) details were completed during the month. Six (6) citations and 22 warnings were issued. The stops included ten (10) for speeding, 17 stop sign violations and one (1) for no registration.

THIRTEENTH ORDER OF BUSINESS

**Audience
Requests**

Comments/Supervisors'

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

FOURTEENTH ORDER OF BUSINESS

Adjournment

There being nothing additional to discuss, the meeting adjourned.

On MOTION by Mr. Brougham seconded by Mr. Slater, with all in favor, the meeting adjourned at 10:03 a.m.


Secretary/Assistant Secretary


Chair/Vice Chair