

**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, July 25, 2012, 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 (via telephone)	Assistant Secretary

Also present were:

Chuck Adams	District Manager
Cleo Crismond	Assistant Regional Manager
Jeff Pinder	Wrathell, Hunt and Associates, LLC
Tony Pires	District Counsel
Terry Cole	District Engineer
Aleida Martinez Molina (via telephone)	Weiss Serota, Special Counsel
John Hutton	Trustee Counsel
Tony DiNardo	Developer

FIRST ORDER OF BUSINESS

Call to Order/Roll Call

Mr. Adams called the meeting to order at 8:00 a.m., and noted, for the record, that Supervisors Brougham, Curland, Schutt and Bergmoser were present, in person. Supervisor Slater was attending via telephone.

On MOTION by Mr. Brougham and seconded by Mr. Bergmoser, with all in favor, authorizing Mr. Slater's attendance and full participation, via telephone, due to special circumstances, was approved.

SECOND ORDER OF BUSINESS

Special Counsel Update: Bankruptcy Proceedings [Aleida Martinez Molina]

Ms. Martinez Molina reported that nothing of great significance, affecting CDD #1, has transpired in the last month. The appeals were finalized. Not affecting CDD #1 but, of significance in the overall case, is the court's order sanctioning the golf course litigants and their attorneys, with the attorneys' sanctions being \$50,000 and the amounts incurred to the debtor to the defender addressing these issues amounted to nearly \$500,000, which is the amount the golf course litigants are responsible for. This matter was appealed. Ms. Martinez Molina stated that, while this does not directly impact CDD #1, it is reflective of the amount of money it costs to litigate in bankruptcy but an issue which is hopefully behind everyone.

Mr. Brougham clarified that this relates to a lawsuit filed by a group of golfers. Ms. Martinez Molina stated that the point of this information is to stress that, when a party, in a bankruptcy, proceeds against a non debtor, it can be very expensive.

Ms. Martinez Molina indicated that they completed audit letters, as requested, which were previously prepared, with respect to activity in 2011.

******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

Engineer's Report

Mr. Brougham indicated that he received an anonymous complaint regarding erosion control on Mallards Pond. He felt that the person did not fully understand the geotube approach. A question of the uncovering of drains was brought up and Mr. Brougham asked if Mr. Cole received other reports or instances about plugging the drains. Mr. Cole replied no. Discussion of the drains ensued. Mr. Brougham stated that the complaint stated that the job was not done properly; the seawall was constructed too low.

Mr. Cole presented Draw #69 for the 2005 Series bonds, in the amount of \$4,545. The work was related to renewal of the Phase 3, Unit 1 subdivision improvement bond. Additionally, he has been updating the permit transfer list and lake conveyance lists with the developer.

Mr. Cole reported that he met with Mr. Pires and they reviewed the lake conveyance maps. There are a few lakes that the developer does not wish to convey, at the present time, as

future development may occur adjacent to those areas. The majority of lakes will be conveyed. Mr. Pires stated that the conveyance will be fee-simple, meaning, there might already be easements in place and this relates to transfer of the fee-simple title.

Mr. Cole indicated that a meeting of all parties will be held to discuss lake conveyance and permit transfer for South Florida Water Management District (SFWMD).

Mr. Brougham asked Mr. Cole and Mr. Pires to prepare a report to inform the Board of what they should be concerned about, the positives and negatives, what risks the District will acquire, etc.

Mr. Brougham recalled discussion at the last meeting regarding certificates of completion. Mr. Adams asked if the District has any outstanding projects that are part of the engineer's report, still needing a certificate of completion. Mr. Cole advised that Phase 3, Unit 1 consists of paving a portion of the roadway, completing punch list items, cleaning basins and obtaining a final inspection from Collier County; the estimated costs is \$30,000 for the physical work. In response to Mr. Brougham's question, Mr. Cole confirmed that Phase 3 will remain open until someone spends the money to complete the infrastructure improvements. Mr. Brougham asked for confirmation that the District did not authorize general fund money to perform the work, only to pursue the water management permits. Mr. Adams replied affirmatively.

FIFTH ORDER OF BUSINESS**Additional Discussion: Audited Financial Report for Fiscal Year Ended September 30, 2011, Prepared by Grau & Associates**

Mr. Adams reminded the Board that they accepted the audit, at the last meeting, with adjustments to language; particularly related to Mr. Pires' interpretation that the existing language gave the appearance that the auditor was making a decision regarding whether the District was in a state of financial emergency, when that decision is reserved for the governor. Mr. Pires requested that the language be changed, along with removal of the term 'financial emergency' and replacement with language stating that the District met one or more of the conditions contained in Statute 218. Mr. Adams advised that the audit was filed prior to the June 30, 2012 deadline.

Mr. Adams reported that CDD #2 had further discussions, over the last few weeks, regarding language within their audit concerning the deteriorating financial condition which did not appear to take into consideration the plans of reorganization or the bankruptcy order. CDD #2's auditor reviewed the situation and is now in agreement that there should have been more consideration to the language and reversed their opinion and find that CDD #2 is not necessarily in a deteriorating financial condition.

Mr. Adams indicated that Management would like the Board to authorize them to work with the auditor, requesting that they review the situation and work to make CDD #1's audit more consistent with CDD #2. If this can be accomplished, the Board would be asked to authorize a reissue of the audit.

Mr. Brougham asked if the reissuance is typical. Mr. Adams stated that it is not a typical action; however, it is the only action available to make language adjustments within the audit. Mr. Jeff Pinder, of Wrathell, Hunt and Associates, LLC, concurred. Mr. Pinder indicated that the auditor would be asked to dual-date the audit; the auditors would be considering information that may not have been available at the time. Mr. Pinder noted that the auditors were aware of the reorganization but may have not considered it as fully as they could have. Mr. Brougham asked if the auditor will charge additional fees for the reconsideration. Mr. Adams indicated that he passed along the District's desire to not pay additional fees and asked Mr. Pinder if he received a response. Mr. Pinder was not aware of any additional fees being charged.

Mr. Brougham stressed that the bankruptcy has been well known for several years and voiced his amazement that Grau & Associates did not give proper consideration to the fact that the developer emerged from bankruptcy and include more appropriate comments in the audit.

Mr. Curland asked if the original audit that was filed remains on file, meaning anyone who wishes to review the District's audit history has access to both versions. Mr. Pinder replied affirmatively.

Mr. Slater asked if filing the revised audit is a time sensitive matter. Mr. Pinder was not aware of an issue, as the original audit was filed timely; there is no deadline for filing an amended audit.

Mr. Schutt asked if CDD #1's audit contains the deteriorating financial condition language. Mr. Adams replied affirmatively. Mr. Schutt asked if the District explored what that term really means. Mr. Pinder stated that the term is subjective and auditors typically arrive at

this determination based on completing an auditor general spreadsheet; based on the numbers, an entity is determined to either be in a state of deteriorating financial condition or not. Auditors report the outcome because they are required by the auditor general to do so. Mr. Schutt questioned the formula used, as CDD #1 has significant reserves, compared to CDD #2, and wondered if the auditor only looked at the fact that the developer was in bankruptcy and had defaulted on the bond payments. Mr. Pinder confirmed that the default on the bond payments was a large consideration; additionally, not meeting the reserve requirement on the Series 2002 A&B bonds and the Series 2005 debt service reserve requirements and nonpayment of assessments are all factors.

Mr. Bergmoser stated that he cannot be as critical of the audit as Mr. Brougham, as he believes that the audit should be a snapshot of the District's operations, as of September 30, 2011. At that time, the developer had not come out of bankruptcy and the District had not received funds and, as of September 30, 2011, the District was in a precarious position. Mr. Pinder stated that he does not disagree with Mr. Bergmoser's statement but added that he thought the reorganization was approved in August, 2011. In response to Mr. Bergmoser's question, Mr. Pinder confirmed that the District only received funds subsequent to the end of Fiscal Year 2011. Mr. Pinder confirmed that the numbers in the audit will not change; only the language will be updated.

Mr. Brougham voiced his opinion that the issue of bond default is the largest issue precluding the District obtaining a line of credit and noted that it will remain an issue until the default is cleared.

On MOTION by Mr. Curland and seconded by Mr. Bergmoser, with all in favor, authorizing Staff to work with Grau & Associates, revisiting the audit language and findings, as they may be influenced by the approved plans of reorganization, was approved.

SIXTH ORDER OF BUSINESS

**Continued Discussion: Fiscal Year 2013
Proposed Budget**

Mr. Brougham referred to the engineering line item, on Page 1, and asked what is planned for Fiscal Year 2013 that would merit a \$15,000 engineering budget. Mr. Cole indicated that \$15,000 is the base amount that has been used nearly every year.

Mr. Brougham asked Mr. Adams if insurance was rebid. Mr. Adams asked Mr. Pinder to comment. Mr. Pinder indicated that he recently found out that PGIT will not renew all CDDs this year; the insurance agent is seeking alternative coverages. Mr. Pinder was aware of the Florida Insurance Alliance (FIA) as possibly the only alternative. Mr. Pinder hopes to have additional information for the next meeting.

Mr. Brougham commented on the increase from \$16,000 to \$29,000. Mr. Adams indicated that the increase was related to the District's financial condition, along with a review and true up of the value of the District's insurable assets. Mr. Brougham asked for a better estimate of the insurance expense by the next meeting.

Mr. Brougham questioned the \$15,500 trustee line item. Mr. Adams confirmed that the trustee automatically pays themselves. Mr. Brougham voiced his objection to paying trustee fees.

Mr. Brougham asked if the access control contractual services line item was adjusted for additional weeks of service. Mr. Adams stated that a true up was done and the number was based on the actual anticipated increases to salary.

Mr. Brougham felt that the \$4,500 insurance line item for insuring the cars was high. Mr. Adams indicated the figure covers the cars and the gatehouses.

In response to a question regarding rebidding access control services, Mr. Adams stated that, at the August meeting, the Board must consider rebidding it or adding a year to the current agreement; the term expires on December 1. Mr. Adams clarified that though the bidding process maybe used, it is no longer a requirement; the Districts may use an informal proposal process. Mr. Brougham explained that, when the District changed its Rules of Procedures, they removed the requirement to bid access control services; the Board has options regarding how it hires a contractor. Mr. Pires noted that the contract is between both Districts and The Foundation and the interlocal agreement will require that both Districts agree to what transpires.

Mr. Brougham referred to the water management definition, on Page 5, and asked Mr. Adams to break out the total, showing the shared portion between the Districts. Mr. Adams

clarified that water management, with the exception of Belle Meade, is not a shared expense. Mr. Brougham asked that the Belle Meade portion be split out.

Mr. Slater asked why the irrigation supply system line item, on Page 2, increased from \$93,221 to \$118,800. Mr. Adams indicated that there was a reduction in operating costs but \$30,000 was added to conduct ongoing water quality monitoring during the fiscal year. In the past, the monitoring was paid through the construction funds but is now coming into the general fund.

SEVENTH ORDER OF BUSINESS

Update: Lake Ownership Transfer

This item was discussed during the District Engineer's report.

EIGHTH ORDER OF BUSINESS

Approval of June 27, 2012 Regular Meeting Minutes

Mr. Brougham presented the June 27, 2012 Regular Meeting Minutes and asked for any additions, deletions or corrections.

The following changes were made:

Line 231: Delete "however,"

Line 232: Replace "the District" with "it"

Line 232: Insert "not" after "would"

Line 226: Insert "work under the" before "bond"

Line 248: Change "STP" to "SDP"

Line 251: Change "LakeMasters" to "Turrell Hall & Associates"

Line 303: Change "a Board Member" to "Mr. Schutt"

Line 377: Delete "funds"

Mr. Brougham questioned if the hurricane refund checks were sent to residents. Mr. Adams deferred to Mr. Pinder. Mr. Pinder indicated that the information was received from Ms. Carlson and the checks are being processed and should be mailed shortly.

On MOTION by Mr. Curland and seconded by Mr. Bergmoser, with all in favor, the June 27, 2012 Regular Meeting Minutes, as amended, were approved.

NINTH ORDER OF BUSINESS

Other Business

There being no other business, the next item followed.

TENTH ORDER OF BUSINESS

Staff Reports

a. Attorney

Mr. Pires reported that he spoke with Mr. Gary Linton, of Rookery Bay National Research Reserve, expressing the District's concerns about traffic and u-turns to go northbound on U.S. 1. Mr. Lytton stated that the median break was blocked by FDOT and directed them to u-turn at Fiddler's Creek Parkway. Mr. Lytton indicated that they will advise their people about the turtle watch. Mr. Lytton requested to introduce Rookery Bay to the Fiddler's Creek community.

Mr. Cole discussed efforts to secure a traffic light at the intersection of Fiddler's Creek Parkway and 951.

b. Manager

i. Unaudited Financial Statements as of June 30, 2012

Mr. Adams presented the Unaudited Financial Statements as of June 30, 2012. He noted that assessment collections are at 102%.

Mr. Brougham pointed out that, at the end of the fiscal year, the fund balance should be significantly higher than budgeted. Mr. Adams concurred.

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

The next meeting is scheduled for August 22, 2012.

c. Operations Manager

Mr. Brougham asked if Ms. Crismond's report could be available prior to the meetings.

Ms. Crismond presented the Monthly Field Operations Status Report. She noted that LakeMasters will be replanting an area located off Hole #17, called "the pit", as the first planting was not successful. It was pointed out that Ms. Crismond's report identifies Hole #18. Ms. Crismond confirmed that it is Hole #17 and assured the Board that she knows the correct location. She met with Mr. Albeit and Mr. Vajen regarding installation of spike rush, at a cost of \$500. Discussion ensued regarding whether this cost is the District's responsibility.

On MOTION by Mr. Brougham and seconded by Mr. Slater, with Mr. Curland, Mr. Bergmoser and Mr. Schutt dissenting, authorizing \$500 for replanting "the pit" with spike rush was not approved. (Motion failed 2-3)

Ms. Crismond reviewed proposals to replace the fountain motors; \$11,400 from Architectural Fountains and \$9,000 from Bentley Electric, both with three (3)-year warranties. Discussion ensued regarding the scope of work. Mr. Schutt questioned if the District investigated why the motors and pumps are failing and whether the lake environment is causing the fountains to fail. It was suggested that the maintenance agreement with Architectural Fountains be terminated, if new motors are installed. Ms. Crismond confirmed that she is trying to obtain maintenance proposals.

On MOTION by Mr. Brougham and seconded by Mr. Curland, with Mr. Bergmoser and Mr. Slater in favor and Mr. Mr. Schutt dissenting, Bentley Electric's fountain motor replacement proposal, for two (2) motors, in a not-to-exceed amount of \$9,000, was approved. (Motion passed 4-1)

Ms. Crismond indicated that whitefly treatments continue. Major tree pruning has been completed. Noting continual delays, Mr. Brougham suggested that the District consider a different vendor, if TruGreen cannot fulfill the terms of their contract. Mr. Brougham asked that TruGreen be formally notified of the District's concern.

Tree trimming has not started, as additional quotes are pending.

Regarding landscape renovation, Ms. Crismond reported that she reviewed Fiddler's Creek Parkway for necessary work. Mr. Adams noted that the budget is currently \$145,000, which is \$80,000 more than in previous years. Mr. Brougham stated that he does not want work to proceed until specific plans are developed and approved by The Foundation's Design and Review Committee. Mr. Pires noted that an amendment may be needed, depending on the original landscaping plan filed with the county. Mr. Cole indicated that there is generally a lot of leeway for maintenance. Discussion ensued regarding developing and architectural plan. Mr. Cole recommended contacting Mr. Bill Slayback, who was the landscape architect on a number of projects in Fiddler's Creek.

Regarding the Mahogany Bend lift station, Ms. Crismond indicated that Mr. Cole worked with the county on approval to install the double gate system; however, the county may now want a fence installed.

Regarding sidewalk cleaning, Ms. Crismond recalled the Board's request for a Citra-Shield test area. The test area was completed and will be monitored. The previously approved sidewalk and curb cleaning project will commence in October.

Ms. Crismond reviewed the monthly patrol services. She noted that CDD #2 requested information about traffic calming devices to reduce speed and whether the sheriff will continue patrolling if the speed limit is changed to 35 mph. Mr. Pires discussed the city and county speed ordinances. Discussion ensued regarding the CDD's ability to change the speed limits, enforcement, etc.

ELEVENTH ORDER OF BUSINESS

**Audience
Requests**

Comments/Supervisors'

Regarding the proposed budget, Mr. Adams indicated that assessment levels will increase over the prior year, necessitating a mailed notice to residents. The alternative is to cut expenditures or utilize fund balance to offset the difference and maintain the current assessment level. Mr. Brougham stated his preference to reduce expenditures to maintain the same assessment level, rather than utilizing fund balance.

On MOTION by Mr. Curland and seconded by Mr. Slater, with Mr. Curland, Mr. Slater and Mr. Bergmoser in favor and Mr. Brougham dissenting, using fund balance to maintain the same assessment level of \$1,294.05, in Fiscal Year 2013, as in Fiscal Year 2012, was approved. (Motion passed 3-2)

Mr. Brougham recalled that, in 2007, the Board approved up to \$10,000 for landscape architectural plans to apply for a grant for median landscaping. The total expenditure in 2007 was \$4,600. A grant was approved by the state but never funded; the program was recently refunded this year. Mr. Brougham indicated that he took preliminary steps to rejuvenate the District's grant application. He noted that there may be minor costs involved in moving forward and asked the Board to authorize him to spend up to \$1,000 to complete the new application. In

general, the other Board Members, with the exception of Mr. Slater, were not in favor of the expenditure and felt that the project should be turned over to The Foundation. Mr. Brougham agreed to drop the pursuit of the grant.

TWELFTH ORDER OF BUSINESS

Adjournment

There being nothing additional to discuss, the meeting adjourned.

On MOTION by Mr. Brougham and seconded by Mr. Bergmoser, with all in favor, the meeting adjourned at 9:35 a.m.


Secretary/Assistant Secretary


Chair/Vice Chair