

**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, September 26, 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	Assistant Secretary

**Also present were:**

Chuck Adams	District Manager
Cleo Crismond	Assistant Regional Manager
Tony Pires	District Counsel
Terry Cole	District Engineer
Ron Albeit	The Foundation
Aleida Martinez Molina (via telephone)	Weiss Serota, Special Counsel
John Hutton (via telephone)	Trustee Counsel
Bob O'Connell	Resident
Jim Dunleavy	Resident
Bill Kluge	Resident
John Portnoff	Resident
Dorothy Hirsch	Resident
Jesse Fritz	Resident

**FIRST ORDER OF BUSINESS**

**Call to Order/Roll Call**

Mr. Adams called the meeting to order at 8:02 a.m., and noted, for the record, that all Supervisors were present, in person.

▪ **Lake Conveyance Progress Update**

**\*\*\*This item was an addition to the agenda.\*\*\***

Mr. Pires presented a memorandum on the lake conveyance matter. He indicated that the District has various lakes comprised of surface water management systems, which were constructed by the developer but paid for with bond proceeds. The District received these lakes

by way of easements, grants of easements, assignments or dedications. The District has been in discussions with the developer regarding fee-simple title of all lakes, for several years. Discussions were halted during the bankruptcy but have restarted. Mr. Pires recalled the Board's request for the memorandum of the pros and cons to ownership of the lakes. He advised that, in his experience, fee-simple ownership of the lakes is in the District's best interests, as it has liability because it owns and operates a surface water management system; ownership would give the District greater control over the lakes.

Mr. Brougham summarized that, by accepting fee-simple ownership of the lakes, the District does not increase its liability; however, it gains greater control over the lakes. Mr. Brougham indicated that a few of the lakes carry an assessment higher than the standard \$100; some are in the thousands. He noted that there were questions regarding whether the taxes were paid on a few of the lakes; therefore, Mr. Brougham suggested that the District not accept ownership of any lakes that are encumbered by a tax lien or unpaid taxes.

Mr. Pires explained the process and requirements if there are tax liens or unpaid taxes.

Mr. Curland asked if there is any downside to assuming ownership of the lakes. Mr. Pires replied no. Mr. Bergmoser asked who owns the actual creek, Fiddler's Creek, running through the District and whether the District would ever take ownership of it. Mr. Pires indicated that a portion of Fiddler's Creek is part of one (1) of the lakes to be conveyed. Mr. Cole confirmed that Fiddler's Creek is included in the lake conveyance. Mr. Cole presented a map of the lakes to be conveyed and the areas involved; the developer is still working in a few areas and will wait to convey those areas.

Mr. Schutt referred to Page 3, of Mr. Pires' memorandum, stating "until transfer of the South Florida Water Management District (SFWMD) permit to the CDD is approved by the SFWMD, the developer, as permittee, is liable for compliance with the permits". Mr. Schutt pointed out that the District just spent \$1 million to become compliant and asked if, based on the statement, those costs should have been incurred by the developer. Mr. Brougham clarified that the District spent \$200,000, not \$1 million. Mr. Pires acknowledged Mr. Schutt's question. Mr. Schutt reiterated his question and asked if the developer should have paid for the repairs and whether the District should be reimbursed for the money it spent. Mr. Pires indicated that the Board must decide how to approach that matter, when the operating permits are transferred. Mr. Brougham recalled that the Board determined that erosion control measures were a benefit to the

community. Mr. Brougham asked that Mr. Schutt's question be responded to factually, regarding who has legal responsibility to fund erosion control, prior to the District spending more money.

Mr. Pires indicated that part of the discussion involved the fact that the District is not the permit holder. He noted other situations where SFWMD stated that an entity must not only ensure that the lakes are in compliance but the entity must also obtain the operating permit; failure to have the permit will subject the entity to \$10,000 per day enforcement penalties.

Mr. Cole recalled that the Board's decision to move forward on lake bank erosion control, as it is a maintenance item.

Mr. Brougham directed Mr. Adams, Mr. Cole and Mr. Pires to provide a full briefing on Mr. Schutt's question.

## SECOND ORDER OF BUSINESS

### Special Counsel Update: Bankruptcy Proceedings

Ms. Martinez Molina reported that, since the last meeting, there have been no developments directly effecting CDD #1. She noted that she was consulted regarding the debtor's plans of reorganization, as they were amended and modified, relative to Management's preparation of bond amortization schedules. Ms. Martinez Molina advised that the only ongoing development is the golf course litigants' sanctions issue, which she finds serious and somewhat unprecedented.

Mr. Brougham recalled that, as part of the bankruptcy, principal and interest payments on some bond series were on hold and asked if that stay will expire and payments will resume in November or May. Mr. Adams confirmed that payments will resume in May. Ms. Martinez Molina stated that there was some question on this, as an earlier plan listed a certain date, which was later modified.

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

#### ▪ Lake Conveyance Progress Update

**\*\*\*Discussion on this item resumed.\*\*\***

Mr. Schutt recalled that Mr. Pires found no downside with the District moving forward with this; however, he feels that the downside is that the permit holder is responsible for compliance. Mr. Schutt stated that the District is facing expenditures of \$1 million, over the next

few years, to address erosion control. He questioned why the District would accept responsibility and take the permit if the developer could pay for it. Mr. Pires explained the SFWMD's terms and noted that conveyance or fee-simple ownership does not automatically make the District the permit holder.

**On MOTION by Mr. Brougham and seconded by Mr. Slater, with all in favor, directing Staff to proceed with completion of the fee-simple lake conveyance ownership activities and bring to the Board for final approval, was approved.**

**THIRD ORDER OF BUSINESS**

**Consideration of Security RFP Results and Contract Award or Renewal**

Mr. Brougham recalled extensive discussion regarding the security contract. He explained that The Foundation has provided security services for both CDDs for more than ten (10) years. The CDDs have an interlocal agreement to share the costs, on a prorated basis, determined by the number of units. Mr. Brougham stated that several years ago the District amended its Rules of Procedure to specify that the District must bid the security contract; however, two (2) years ago the rules were modified such that, since security is not a maintenance item, bidding would not be required, which is allowable under statute. He advised that both Districts retain the ability to renew the contract, request informal quotes from various vendors or complete the sealed bid process. Two (2) months ago, the Board voted not to renew the security contract. At the last meeting, the Board directed Staff to solicit informal bids for security services for CDD #1, only, as CDD #2 voted to renew its contract with The Foundation.

Mr. Adams indicated that he contacted four (4) vendors and provided the RFP documents; three (3) firms attended the pre-proposal meeting and two (2) submitted proposals. Mr. Brougham advised that the current contract with The Foundations is for actual labor and benefit costs, on a monthly basis. G4S submitted the low bid of \$292,537.80 and Allegiance was \$307,780. The District's budget is \$303,185. Mr. Brougham stated that the Board will decide whether to renew the current contract or award the contract to another bidder.

Mr. Brougham acknowledged the residents in attendance and the desire of some to speak. In order to gauge opinion, Mr. Brougham asked those in the audience who support renewal of the District's current contract, to raise their hands. He asked those who support awarding the

contract to another vendor to raise their hands. Mr. Curland asked if the Board should comment, prior to public comments. Mr. Brougham advised that he prefers to hold public comment first, followed by motions, with comments by the Board prior to voting.

Mr. Bob O'Connell, a resident, mentioned incidents during the past year where security notified him that his garage door was open. Another time security discovered and advised residents of a water main break. He feels that renewal of the security agreement with The Foundation is a wise expenditure.

Mr. Jim Dunleavy, a resident, asked the cost for the current security provider. Mr. Brougham advised that CDD's portion of the contract is a little more than \$303,000.

Mr. Bill Kluge, a resident, questioned if the District's portion of the contract includes Mr. Mike Charbonneau's salary. Mr. Brougham indicated that Mr. Charbonneau is paid through The Foundation. A Board Member pointed out that the money comes from the same set of pockets.

Mr. John Portnoff, a resident, noted that the community has many renters and the sales office is reducing personnel. He felt that the current provider is familiar with the community. He feels that it is the wrong time and it would be foolish to hire a new company that does not know the community and its residents. Mr. Portnoff discussed the difference in costs between the current contractor and the low bidder.

Mr. Curland thanked the residents for attending and voicing their opinions. He noted that he was one (1) of the Supervisors who supported the informal RFP process, to determine the available options. He noted that proposals were received from two (2) high quality, stable companies. Mr. Curland pointed out that the cost provided by Mr. Brougham was not a true cost; The Foundation's total contract for both CDDs, for next year is \$457,176. He noted numerous items, in excess of the \$303,185 budgeted for security services, which must also be factored in to the cost to have The Foundation provide the District's security services. Mr. Curland summarized that the cost would be approximately \$76 per door front, per year, with an outside vendor; they are currently paying \$154.77 for The Foundation's security services.

Mr. Bergmoser voiced his opinion that Mr. Charbonneau and his staff do an incredible job for the District. He noted that he also supported the informal RFP process, as a way to understand other processes or technologies that might be available. Feeling that the cost savings are minimal, Mr. Bergmoser supported renewal of the contract with The Foundation.

Mr. Slater noted that he supported the RFP process. He discussed the service provided by The Foundation and, based on the limited difference in price, voiced his support of renewing the District's contract with The Foundation.

Mr. Schutt pointed out that the Board has only heard from 3% of the residents on this issue. He questioned why the District awards any contracts to The Foundation, especially a pseudo-law enforcement contract, when they take advantage of the residents, on a regular basis. Mr. Brougham cautioned Mr. Schutt to temper his words against The Foundation and advised him not to say anything if he cannot use appropriate words.

**On MOTION by Mr. Slater and seconded by Mr. Bergmoser, with Mr. Brougham, Mr. Bergmoser, Mr. Curland and Mr. Slater in favor and Mr. Schutt dissenting, authorizing notification of renewal of the Security Services Personnel Agreement with The Foundation, was approved. (Motion passed 4-1)**

Mr. Brougham indicated that the security services contract is an annual contract renewable every December. The contract is in conjunction with CDD #2. In order to avoid yearly discussion and consideration of the security contract, Mr. Brougham voiced his desire to amend the current contract making it a continuing services contract with 90-day termination by either party and with an appropriate annual escalator for labor and benefits, approved annually, by the Board. He feels that this type of contract would still allow the Board to seek outside quotes to gauge the market or hold a sealed bid.

Mr. Brougham stated that his rationale for making this change is to avoid putting the Board and community through anguish and angst, on a yearly basis. In response to a question, Mr. Brougham indicated that he was considering an annual escalator of 2% to 3%.

Mr. Curland questioned if the motion is to change the procedure or if the final document will be presented for the Board's approval. Mr. Brougham stated that the motion is to direct Staff to work with CDD #2 and the current vendor on an amendment to the contract, subject to approval by both Boards, at a future meeting.

Regarding joint approval of a contract, Mr. Curland pointed out that the District currently pays two-thirds of the contract costs; however, it only has half the vote. He noted that, once CDD #2 votes on something, CDD #1 is basically obligated to go along with it. Mr. Curland

voiced his feeling that CDD #1 should have a say relative to the population that they represent and the proportion that this District is funding; currently CDD #1 does not.

**On MOTION by Mr. Brougham and seconded by Mr. Slater, with Mr. Brougham, Mr. Slater and Mr. Curland in favor and Mr. Schutt and Mr. Bergmoser dissenting, directing Staff, working in conjunction with CDD #2, to modify the current security services agreement, making it a continuing services agreement, with a 90-day termination provision and an appropriate annual escalator, was approved. (Motion passed 3-2)**

Mr. Brougham asked that this be included as a discussion item for both Boards, next month. Mr. Adams indicated that he would like this completed at the next meeting. Mr. Slater questioned why Mr. Adams is in a rush. Mr. Adams stated that he wants it to be part of the renewal contract that must be submitted at least 30 days prior to expiration of the current contract.

Mr. Brougham reiterated that the goal is to retain controls, confirm the budget each year based upon an escalation clause and retain flexibility to do what is appropriate with respect to cancellation.

**FOURTH ORDER OF BUSINESS**

**Developer's Report/Update**

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

**FIFTH ORDER OF BUSINESS**

**Engineer's Report**

- **Mahogany Bend Lift Station – Double Gate and Landscaping**

***\*\*\*This item was an addition to the agenda.\*\*\****

Regarding the Mahogany Bend lift station, Mr. Brougham recalled that the District intended to install double gates and landscaping; however, the county now requires a full fence enclosure and is unwilling to grandfather the lift station in. Mr. Brougham questioned if this can be negotiated. Mr. Cole stated that he spoke to the person who reviews deviation requests. Mr. Brougham asked if he should contact Mr. Nick \_\_\_\_\_. Mr. Cole felt that it might help. Mr. Cole confirmed that he did not receive a written refusal.

Mr. Cole presented Draw #71 for the 2005 Series bonds, in the amount of \$1,665. The work was primarily related to the annual D&D monitoring report renewal required by Collier County, as well as work related to the water management district permit transfer efforts with the developer and his attorney.

In response to Mr. Brougham's question, Mr. Cole confirmed that he notified the lake bank contractor regarding the geotube issues of floating UV strips. Mr. Cole described the problem as sporadic, rather than widespread.

Ms. Dorothy Hirsch, a resident, asked if the erosion project includes the issues in her area, which is Mulberry. Mr. Cole explained that the areas were prioritized and the highest priority areas were completed first; other areas will follow. Mr. Brougham directed Mr. Cole to investigate Ms. Hirsch's bank.

**SIXTH ORDER OF BUSINESS**

**Approval of August 22, 2012 Public Hearing and Regular Meeting Minutes**

Mr. Brougham presented the August 22, 2012 Public Hearing and Regular Meeting Minutes and asked for any additions, deletions or corrections.

The following changes were made:

Line 29: Change "Jack \_\_\_\_\_" to "Jack Perrin"

Line 31: Delete "Jerry \_\_\_\_\_" and add "Joe Badessa"

Line 116: Change "A Board Member" to "Mr. Pires"

Line 233: Change "Mr. \_\_\_\_\_" to "Mr. Badessa"

Line 238: Insert "one of" after "owns"

Line 241: Change "Jack \_\_\_\_\_" to "Jack Perrin"

Line 253: Change "Joe \_\_\_\_\_" to "Joe Badessa"

Lines 307 and 308: Delete entire sentence

Line 413: Delete "Mr. Jerry \_\_\_\_\_," and change "a" to "A"

**On MOTION by Mr. Curland and seconded by Mr. Brougham, with all in favor, the August 22, 2012 Public Hearing and Regular Meeting Minutes, as amended, were approved.**



**SEVENTH ORDER OF BUSINESS**

**Other Business**

There being no other business, the next item followed.

**EIGHTH ORDER OF BUSINESS**

**Staff Reports**

**a. Attorney**

There being nothing additional to report, the next item followed.

**b. Manager**

Mr. Brougham asked if a response from the bond trustee was received regarding the District's request for reimbursement of funds and, if denied, why and the outcome of the vote. Mr. Adams stated that nothing was received; the last response was that trustee's counsel submitted multiple requests and is still following up, on behalf of the trustee. Mr. Brougham questioned the District's recourse, under the terms of the trust indenture. Mr. Adams will review the indenture for language regarding a requirement to respond. Mr. Brougham clarified that he is not suggesting litigation but he wants to know if the District is entitled to a response.

**i. Unaudited Financial Statements as of August 31, 2012**

Mr. Brougham presented the Unaudited Financial Statements as of August 31, 2012. He questioned why the developer's assessments are in arrears two (2) months. Mr. Adams indicated that, as of August 31, 2012, he was in arrears; however, as of September 11, 2012, both payments were received. Mr. Adams advised that, currently, the only outstanding payment is for September. In response to Mr. Brougham's question, Mr. Adams indicated that invoicing is on the first of the month. Mr. Brougham asked if a late fee can be imposed. Mr. Pires was not aware of a statutory ability to impose a late fee; however, the District could charge interest. Mr. Brougham asked Mr. Albeit for his cooperation in paying the bill on time.

A question was raised regarding why general fund 002 is not at zero. Mr. Adams indicated that it is a matter of timing; checks were sent in early September and these financials are for August.

**ii. Fiscal Year 2013 Proposed Meeting Schedule**

Mr. Brougham presented the proposed meeting schedule for Fiscal Year 2013.

**On MOTION by Mr. Brougham and seconded by Mr. Bergmoser, with all in favor, the Fiscal Year 2013 Proposed Meeting Schedule, as presented, and directing Staff to advertise, accordingly, was approved.**

**c. Operations Manager**

Ms. Crismond presented the Monthly Field Operations Status Report. She reported that Management completed the lake tour on September 7, 2012 with LakeMasters and Ms. DiNardo, a CDD #2 Supervisor. She advised that LakeMasters is replanting Lake #35 and #65B, as the previous plants were not successful.

Regarding the fountains, Ms. Crismond indicated that Management is trying to locate a new contractor for ongoing fountain maintenance but will continue using the current contractor, until a new one is found. The fountains are scheduled to be cleaned this week. Mr. Brougham asked that the bubblers be checked.

Ms. Crismond stated that tree trimming is underway; Davey's Tree Service is performing the work for a cost of \$86,028, a savings of \$7,500 over the previous contractor. Trimming commenced in mid-September and should conclude on Saturday.

The landscape renovation project should be ready for presentation at the next meeting. In response to Mr. Brougham's question, Ms. Crismond confirmed that the landscape architect is actively working on the landscape evaluation and design and has consulted with Mr. Cole. Mr. Brougham stressed that he does not want the landscape architect to expend a lot of time on the project without involving Mr. Jim Vajen.

Ms. Crismond reported that sidewalk and gutter cleaning is scheduled to commence on October 15 and should be completed in three (3) weeks. It was noted that the sidewalk on Mulberry lane is being cleaned this week, as Ms. Hirsch fell last week. Mr. Pires recalled previous discussion about liability for these types of incidents and noted that it appears the person could sue or seek recovery from the District and the individual homeowner or HOA. Mr. Brougham asked Mr. Albeit to notify the CDD immediately of any dangerous sidewalk conditions.

The question regarding the District's liability, with regard to the lakes, and whether the District is covered by insurance was raised. Mr. Pires indicated that, typically, in a drowning

incident, a representative of the estate will file a claim against everyone. The CDD has liability; however, there are statutory caps for governmental bodies.

Mr. Jesse Fritz, a resident, reported a potential safety issue on Championship, where shrubs make it difficult to see around the curve. Mr. Brougham asked Ms. Crismond to investigate.

**NINTH ORDER OF BUSINESS**

**Audience  
Requests**

**Comments/Supervisors'**

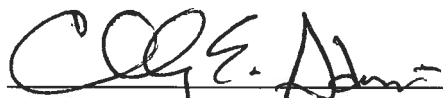
Mr. Curland showed a visitor's pass and noted that the new passes include an advertisement for the developer. He asked if this is appropriate. Mr. Pires advised that it is not necessarily inappropriate; the Board can decide whether to allow it.

**TENTH 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 approximately 9:25 a.m.**

  
Secretary/Assistant Secretary

  
Chair/Vice Chair