

**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, October 24, 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
Tony Pires	District Counsel
Terry Cole	District Engineer
Ron Albeit	The Foundation
Aleida Martinez Molina (via telephone)	Weiss Serota, Special Counsel
Tony DiNardo	Developer
Vicki DiNardo	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 Supervisors Brougham, Curland, Bergmoser and Schutt were present, in person. Supervisor Slater was attending via telephone.

On MOTION by Mr. Curland and seconded by Mr. Brougham, 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

Ms. Martinez Molina reported that nothing out of the ordinary occurred. She indicated that the Debtor's Amended Post Confirmation Quarterly Operating Report was received, for the past quarter, reflecting that insurance is in place; everything is in order, pursuant to the reorganization plan.

Ms. Martinez Molina noted the continuation of sanctions against the golf litigants and their attorneys for approximately half a million dollars. The golf litigants and their attorneys are appealing. They were attempting to have the bankruptcy court reconsider or adjust the amounts; however, the bankruptcy court acknowledged the affidavits that the debtors submitted regarding the attorney fees incurred and the order was entered.

In response to a question from Mr. Brougham, Ms. Martinez Molina explained that the quarterly report is a form that all Chapter 11 entities must submit, quarterly; it is, basically, a questionnaire containing several questions.

Mr. Schutt stated that their progress, in terms of projected sales, is not included in this report. Ms. Martinez Molina concurred. Mr. Brougham asked if there is a formal method to chart progress. Ms. Martinez Molina advised that, within the bankruptcy context, the quarterly report is received, post confirmation without such details.

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

THIRD ORDER OF BUSINESS**Presentation of Draft Reissued Fiscal Year 2011 Audit**

Mr. Adams referred to Page 26 of the draft reissued Fiscal Year 2011 audit and reviewed the actions taken to remove the deteriorating financial condition. He explained that, by making these adjustments in the notes and tables, the auditors applied their financial condition assessment procedures and determined that the District is not in a deteriorating financial condition. Mr. Adams indicated that this document will be submitted as a reissued audit, upon the Board's acceptance.

Mr. Slater expressed concern that the reissued audit is being submitted over a year after the close of Fiscal Year 2011 and asked about the submittal requirements of the State of Florida. Mr. Adams recalled that the original audit was submitted prior to the June 30 deadline.

Mr. Pires referred to the statement on Page 5, which indicates that "the majority of the costs were associated with the deceleration of assessments that had previously been recorded".

He expressed his understanding that the assessments are not recorded until collected. Mr. Adams advised that the obligation was recorded. Mr. Pires referred to NOTE 16, on Page 25, reiterating his thought that, generally, assessments are not recorded until collected. Mr. Adams explained that, in the prior year, the assessment obligations were recorded because they were in an accelerated state; in accordance with the Confirmation Order, the assessments were decelerated. Mr. Pires concluded that, typically, the discussion was that the assessments were not reflected as recorded until collected; however, in this case, the obligation was recorded. Mr. Adams concurred.

Mr. Brougham referred to the last paragraph on Page 34, which indicates that no deteriorating financial conditions were noted and advised that this was the ultimate objective.

On MOTION by Mr. Bergmoser and seconded by Mr. Curland, with all in favor, the Draft Reissued Fiscal Year 2011 Audit, as presented, was approved.

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

Mr. Cole presented Draw #72 for the 2005 Series bonds, in the amount of \$5,608.77. The draw is primarily for work relative to meetings with the water management district, lake conveyance, water management certification, etc., which is ongoing.

Mr. Brougham inquired about the status of the lake conveyance. Mr. Cole advised that, in the next month, documents will be presented to Mr. Pires for review and, subsequently, to the Board. Mr. Pires indicated that he will review the documents for legal sufficiency and notify Mr. Cole and the developer if anything further is needed. Once the package is completed, it will be presented to the Board, for acceptance.

Mr. Brougham asked if Mr. Cole contacted the erosion control contractor to advise that he needs to return, at no cost, to fix the floating UV screens. Mr. Cole replied affirmatively. He noted that the contractor will not fix the screens until the water levels recede.

SIXTH ORDER OF BUSINESS

Discussion: Memo Regarding Appropriateness of CDD Paying for Lake Bank Erosion Repairs

Mr. Brougham advised that this memo was created jointly by Mr. Cole, Mr. Adams and Mr. Pires, in response to the question raised by Mr. Schutt, at the last meeting, regarding the lake erosion repair payment obligation.

Mr. Adams explained that the memo discusses the status of the turnover of permits, from the construction to operational phases, provides background in terms of how the lakes were constructed and financed, and who owns the improvements versus the land title. Mr. Adams indicated that the CDD acquired these improvements through the various bond issues and has ownership of the improvement itself, which consists of the hole in the ground and the interconnecting pipe work. The District does not have fee title interest in the land underneath; only an easement giving property control rights necessary to have the improvement in that area and access, as necessary. Mr. Adams stated that, with the acquisition of improvements, through the bond issues, there is an obligation, within the Master Trust Indenture, to maintain and ensure that the integrity of the improvements is continued.

Mr. Adams explained the certification process. He stated that, typically, following certification, the permit is transferred from the construction phase to the operating phase. To date, this has not occurred. Normal wear and tear has taken place on the lakes, such as lake bank erosion, and the CDD is now out of compliance with the permit in various areas around the lake perimeter. Mr. Adams advised that the nine (9)-inch vertical drop is the primary issue; it is a maintenance item that is normally addressed as part of a routine maintenance program. With regard to the appropriateness of the lake bank erosion repair payment obligation, Staff concluded that it is not only appropriate but that the Board has a responsibility to the bondholders to make repairs, through the Master Trust Indenture. Mr. Adams indicated that this is clearly an operation and maintenance item.

Mr. Schutt voiced his opinion that, while it is in everyone's best interest to maintain the lakes, this is not routine maintenance; it is major maintenance. Routine maintenance is performed on a yearly basis. Mr. Schutt expressed that, if the permit states that the permittee is obliged to pay, the permittee should pay for the repairs. He feels that, while it is in the best interest of the permittee for the CDD residents to pay for erosion repairs, it is in the best interest

of the taxpayers for someone else pay. Mr. Schutt stated that the permit requires that the permittee or the permit holder pay for it so they should let the permit holder pay for it.

For clarification, Mr. Adams noted that the permit does not speak to this particular responsibility. In a typical setting, the permit holder is responsible for operating and maintaining the improvement, which was constructed under the initial permit; however, the memo outlines the unique circumstances where the District has actually acquired the improvements, has been operating and maintaining those improvements and has an obligation, through the Master Trust Indenture to the bondholders, to operate and maintain them in such a way that they remain compliant with the permits, serve the purpose for which they were constructed and serve the properties that are benefitted and assessed for the improvements. The permit does not necessarily state that the permit holder is financially responsible; it states that they currently are the permit holder and are ultimately responsible to make the improvement.

In response to a comment by Mr. Schutt, Mr. Adams clarified that the current permit is in the construction phase. It is a construction permit issued to the developer, who constructed the improvement and then transferred it to the CDD, through an acquisition agreement. Reimbursement was received for the improvement and the CDD owns the improvement and the responsibility.

Mr. Pires explained that the rules for the South Florida Water Management District (SFWMD), which are incorporated into every permit as a matter of law, provide that, until the permit is transferred to an entity, the permittee is responsible for complying with all of the terms and conditions of the permit. Mr. Adams noted that it does not acknowledge the ownership of the improvement. Mr. Pires advised that the rules also provide that ownership does not effect a transfer of the operating permit; however, he agrees that, under the Master Trust Indenture and Chapter 190, the District has an obligation to maintain its assets and facilities, which is why Staff agreed, in the Memorandum, that the District has the ability, the right and authority to maintain and expend the funds necessary for maintenance. Mr. Pires pointed out that, if the District is operating the facility without an operating permit, SFWMD can send a notice to the District indicating that it must have the operating permit or it cannot operate the system; operating the system without a permit will result in an up to \$10,000 fine per day.

Mr. Brougham voiced his opinion that the District's staff of professionals studied the law and the permit obligations and concluded that it is the District's obligation to maintain the

facilities and that it is appropriate that they pay for them. Mr. Schutt pointed out that the Board has not always followed Staff's advice, in the past. He feels that the facilities can be maintained and paid for by the developer and the District will have satisfied its obligation to the bondholders because it has complied with the condition that the permit holder must pay for it.

Mr. Curland referred to the second paragraph, on Page 2, of the Memorandum, which states, "Once the District constructs or acquires facilities or improvements, including those that comprise the SWMS, the District as the owner of the assets..." and commented that the District does not construct anything; it only provides funding. Mr. Adams advised that the District has the right and ability to construct but they have an acquisition agreement, on this particular project, whereby they acquire from the developer who constructs them. He concurred that the District did not construct. Mr. Pires noted that the statement reads, "constructs or acquires."

SEVENTH ORDER OF BUSINESS**Update: Security Contract Notice of
Renewal and Status of Revised
Agreement**

Mr. Brougham reported that the renewal of the current security contract was signed and delivered to The Foundation last week. The Foundation was notified of the District's intent to renew the existing security contract.

Mr. Adams indicated that Staff is working on the revised contract, which contains new provisions, as discussed at the last meeting. He anticipated presenting a draft at the next meeting. In response to a question from Mr. Brougham, Mr. Adams stated that the revised contract is an amendment to the old contract. Mr. Pires clarified that it is currently structured as the second amendment to the agreement.

Mr. Brougham confirmed that Staff is working on what constitutes a continuous service contract, the caps and limits, cancellation policies, etc., and those will be brought back to both Boards. In the interim, the existing contract is in force, with a new dollar amount.

In response to a question from Mr. Curland, Mr. Adams clarified that this is not a new contract; it is a renewal notice agreement. Mr. Pires advised that the language in the existing contract, that reflects the maximum aggregate annual dollar amount, does not change by virtue of the renewal notice. Mr. Adams explained that the amount provided by the contractor as their

actual cost, for budget purposes, is the amount in the contract. Mr. Brougham asked Mr. Adams to email a copy of the renewal to the Board.

Mr. Curland voiced his opinion that the Board did not formally approve any changes to the agreement, only that it was going to be renewed. Mr. Pires concurred. Further discussion ensued. Mr. Pires felt that the renewal was only to renew the term of the agreement and that the Board did not formally state to increase the maximum annual amount.

In response to a question from Mr. Slater, Mr. Brougham indicated that the argument was one of procedure, where the Board, in its motion last month, did not specifically authorize the Chair to sign an agreement that increased the pre-existing contract amount. Mr. Curland explained that the Board awards contracts by having the contract presented to them, showing the amount; when a contract is renewed, it is renewed without change, unless the change is dictated in the renewal notice, which it was not. He noted that, last month, the Board decided to look at a revised contract and put it into place prior to the end of this year, to be used as the functioning document, going forward. Mr. Curland stressed that contracts are not issued based on budgeted amounts; they are issued on the basis of the contractual language. Mr. Pires expressed his concern regarding the validity of any change in the compensation that is not approved by the Board.

Mr. DiNardo asked if he, as the vendor, has a valid contract if the Board did not approve the contract but it was executed by someone who has the authority to represent the Board. Mr. Pires advised that, from his perspective, the Board did not authorize the Chair to sign the document and increase the compensation amount.

Mr. Bergmoser indicated his understanding that the budgeted amount would be the cap for what would be spent and that was approved as part of the contract. Last month, the Board approved renewal of the contract. Mr. Bergmoser felt that Mr. Brougham's recommendation of an amendment was something completely different. He indicated that the Board should amend the motion to renew the contract at the new cap price. Mr. Pires advised that it was in order for the Board to ratify and execute it.

In response to a question from Mr. Slater, Mr. Adams noted that CDD #1's portion, through the methodology of sharing the cost with CDD #2, is \$303,185.

On MOTION by Mr. Brougham and seconded by Mr. Bergmoser, with Mr. Slater in favor and Mr. Curland and Mr. Schutt dissenting, execution of the renewal of the existing security contract, with the new maximum cap of \$457,176, was ratified. (Motion passed 3 – 2)

EIGHTH ORDER OF BUSINESS**Discussion: Regarding Security Vehicle Replacement**

Mr. Adams asked for direction from the Board with regard to replacement of the current security vehicle, which is a Ford Taurus. He noted that the Crown Victoria is no longer made. Mr. Adams asked if The Foundation was happy with the Taurus. Mr. Albeit replied affirmatively.

Mr. Brougham stated that the Taurus has almost 200,000 miles and had a major transmission issue. Mr. Adams explained that it could not be avoided, as the Board was not in a position to consider replacement because they were unsure about the security contract.

When asked about looking at the same vehicle, Mr. Curland noted that none of the Board Members were experts on security vehicles. He stated that he does not have the knowledge and background to make any recommendations. Mr. Adams pointed out that the recommendation, from the security group, is the Ford Taurus. Mr. Albeit indicated that other clubs are using the Taurus, as well. Mr. Brougham recommended looking at two (2) or three (3) other vehicles. He asked Mr. Albeit and/or Mr. Charbonneau to provide two (2) other options to Mr. Adams to research.

In response to a question regarding the vehicles utilized by other Districts what other Districts use, Mr. Adams stated that the Taurus is what they have gone to because everyone wants it to look like an official law enforcement vehicle. Mr. Brougham asked Mr. Adams to obtain pricing on the Taurus and provide the information back to the Board.

Mr. Curland advised that there is an Interceptor model of the Taurus with heftier construction. Mr. Adams will provide pricing on both models. Mr. Bergmoser suggested looking at the Dodge Charger with a police package and questioned the need for an Interceptor or high performance engine.

NINTH ORDER OF BUSINESS**Approval of September 26, 2012 Regular Meeting Minutes**

Mr. Brougham presented the September 26, 2012 Regular Meeting Minutes and asked for any additions, deletions or corrections.

On MOTION by Mr. Schutt and seconded by Mr. Bergmoser, with all in favor, the September 26, 2012 Regular Meeting Minutes, as presented, were approved.

TENTH ORDER OF BUSINESS

Other Business

There being no other business, the next item followed.

ELEVENTH ORDER OF BUSINESS

Staff Reports

A. Attorney

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

B. Manager

i. Unaudited Financial Statements as of September 30, 2012

Mr. Brougham presented the Unaudited Financial Statements as of September 30, 2012.

Mr. Curland noted that Access Control, Contractual Services is at 107% of budget. Mr. Brougham confirmed that the amount that exceeded the cap will be reimbursed. Mr. Adams explained that the reimbursement is not credited to the line item; it is shown as income and credited to Miscellaneous Income under Credits, as shown on Page 2. Mr. Brougham requested to see the credit document at the next meeting.

ii. NEXT MEETING DATE: November 28, 2012 at 8:00 A.M.

C. Operations Manager

Ms. Crismond reported that the replant was completed on Lakes #35 (Hole #6), 65B and 39A. The next tour is scheduled for Friday, November 9, with Mr. Kurth and Mr. Adams. On October 10, the vault for the north side decorative fountain flooded due to the sump pump failure. The cost to replace the 15 hp, 3-phase motor is \$2,905. The sump pump is \$301.69.

Ms. Crismond indicated that the tree trimming project was completed. Management has been monitoring the ficus abutting Championship Drive; specifically, Deer Crossing. These trees will be reviewed by an arborist for an opinion regarding cutting back the tops approximately five (5) feet to promote undergrowth. Mr. Curland advised Ms. Crismond that the

residents do not want the thick buffer of ficus trees. Mr. Curland noted that, two (2) years ago, the arborists did a great job of pruning and thinning the trees along the backside of Championship Drive. The residents were ecstatic and would like that to continue, as they prefer to have sunlight. Mr. Curland indicated that they residents do want the thick buffer of arboricola hedges because they block the view of Championship Drive.

Mr. Crismond reported that Management will advertise for bids within the next couple of weeks. The contract expires on January 31. Proposals will be presented for consideration at the December meeting.

Ms. Crismond stated that the Board previously approved installation of the double gate at the Mahogany Bend lift station, for \$950.00. The county will not approve the gate installation until a fence enclosure is installed. The fence enclosure is \$1,575.

Mr. Brougham noted that the county changed the specifications for lift stations, subsequent to when the gate was installed on Mulberry. He advised that the landscape buffer is growing in nicely; however, there is a 12' opening, in the front, looking at the gate. Mr. Brougham asked the Board if they want to expend additional funds to install the fence enclosure, in addition to the gate. In response to a question from Mr. Schutt, Mr. Brougham explained that the county now requires a fence around the entire perimeter, if a gate is installed.

On MOTION by Mr. Curland and seconded by Mr. Brougham, with all in favor, installing a fence and gate at the lift station was approved.

Ms. Crismond discussed the landscape renovation program. She advised that the plans were received from the landscape architect. Management requested that the renovations be completed in three (3) phases, over three (3) years, for budget purposes. An additional area was added, at the south entry lake bulkhead area of Royal Palm, for replanting.

Mr. Brougham pointed out that they can revisit the three (3) phases, based upon when the estimates are received and compared to budget. Ms. Crismond will bring the estimates back to the Board, once they are received.

Mr. Crismond reported that sidewalk and curb cleaning continues. She expressed her displeasure with the look of the curbs. Mr. Curland pointed out that there were areas that did not

clean up. Mr. Brougham commented that Mulberry's curbs look good; however, black spots were noted along Championship Drive. Mr. Schutt felt that some of the spots will not come off.

Mr. Curland referred to the test strip on Fiddler's Creek Parkway and when the material would be applied in order to maintain the curbs. He confirmed that the material is a preventative. Ms. Crismond advised that the application would be quarterly; the walkways are pressure cleaned and then chemically treated. She recalled the Board's decision to review the test strip, over the next year, before deciding to move forward. Mr. Schutt pointed out that the cost of the chemical may outweigh the cost of repeated power washing.

Mr. Curland reported that the back gate at Championship Drive was out of service for over two (2) weeks and inquired about the status. Ms. Crismond stated that they are waiting on the card reader.

With regard to the patrol statistics, Mr. Brougham noted that no Citations were issued.

TWELFTH ORDER OF BUSINESS

**Audience
Requests**

Comments/Supervisors'

There were no audience comments.

Mr. Brougham presented an award to Mr. Schutt, on behalf of the Board and residents, for his service on the Board.

Mr. Brougham noted that there will be at least one (1) new Board Member at the November meeting, perhaps three (3) and he wished the candidates good luck.

THIRTEENTH ORDER OF BUSINESS Adjournment

There being nothing additional to discuss, the meeting adjourned.

**On MOTION by Mr. Brougham and seconded by Mr. Schutt,
with all in favor, the meeting adjourned at approximately 9:15
a.m.**


Secretary/Assistant Secretary


Chair/Vice Chair