

**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, November 28, 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
Gerald Bergmoser	Vice Chair
James Curland	Assistant Secretary
Robert Slater	Assistant Secretary
Richard Peterson	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 Fiddler's Creek Foundation
Aleida Martinez Molina (via telephone)	Weiss Serota, Special Counsel
John Hutton (via telephone)	Greenberg Traurig-Trustee Counsel
Tony DiNardo	Developer
Jim Schutt	Resident
Dave Yates	Resident

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 all Supervisors were present, in person.

SECOND ORDER OF BUSINESS

Administration of Oath of Office to Newly Elected Supervisors, Richard Peterson [Seat 3], Robert Slater [Seat 4] and Phillip Brougham [Seat 5] (the following to be provided in separate package)

Mr. Adams, a Notary of the State of Florida and duly authorized, administered the Oath of Office to Mr. Peterson, Mr. Slater and Mr. Brougham. Mr. Adams provided and briefly explained the following items:

- A. Guide to Sunshine Amendment and Code of Ethics for Public Officers and Employees 2012**
- B. Membership, Obligations and Responsibilities**
- C. Form 1: Statement of Financial Interests**
- D. Form 1X: Amendment to Form 1, Statement of Financial Interests**
- E. Form 1F: Final Statement of Financial Interests**

Mr. Pires provided further explanation and advice regarding the Sunshine Law requirements, limitations on communication and meetings, etc. He stated that violations can be considered a civil or a criminal offense and are punishable by a fine or jail.

A CDD email address will be established for Mr. Peterson.

THIRD ORDER OF BUSINESS

**Consideration of Resolution 2013-1,
Electing the Officers of the District**

Mr. Brougham presented Resolution 2013-1 for the Board's consideration. Mr. Curland indicated that it is appropriate for the elected Chair and Vice Chair to be a full-time resident of the District. Mr. Slater nominated Mr. Brougham for Chair. Mr. Brougham nominated Mr. Bergmoser for Vice Chair. No other nominations were made.

There being no other nominations, Mr. Adams advised that he will serve as Secretary, Mr. Wrathell will serve as Treasurer and Assistant Secretary and the remaining Board Members will serve as Assistant Secretaries. The following slate of officers was presented for the Board's consideration:

Chair	<u>Phil Brougham</u>
Vice Chair	<u>Gerald Bergmoser</u>
Secretary	<u>Chuck Adams</u>
Treasurer	<u>Craig Wrathell</u>
Assistant Secretary	<u>James Curland</u>
Assistant Secretary	<u>Robert Slater</u>
Assistant Secretary	<u>Richard Peterson</u>
Assistant Secretary	<u>Craig Wrathell</u>

On MOTION by Mr. Brougham and seconded by Mr. Curland, with all in favor, Resolution 2013-1, Electing the Officers of the District, as nominated and stated, was adopted.

FOURTH ORDER OF BUSINESS**Special Counsel Update: Bankruptcy Proceedings**

******Ms. Martinez Molina joined the meeting.******

Ms. Martinez Molina reported no developments in the bankruptcy, other than the continued litigation regarding sanctions for violations of the automatic stay by the golf course litigants.

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

▪ **Bond Funds Trustee**

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

Mr. Brougham added this item to the agenda due to ongoing adversarial relationships between the trustee and the District, including one (1) or more lawsuits, over the years. He indicated that he reviewed the minutes from CDD #2 and noted that they are trying to locate a replacement for US Bank's trustee position. Mr. Brougham voiced his support of this approach. He stated that the current budget contains a \$15,500 line item for trustee fees and suggested that the District should reconsider whether it is willing to pay the trustee's fee and seek a new trustee.

Mr. Pires indicated that the trustee fees are paid from the District's operating account. Noting the adversarial relationship, Mr. Pires suggested that a way of requesting the trustee to be more cooperative is to refuse to pay them.

In response to a question, Mr. Adams explained that, in the event of a default, consent of the bondholders is necessary, in order to dismiss the trustee and seek another. If the District was not in default, the Board could take action on its own.

Mr. Pires indicated that he will research whether failure to pay the trustee's fees constitutes a breach or default, under the bond covenants.

Mr. Bergmoser questioned the cost to seek and hire a new trustee. Mr. Adams indicated that it involves Staff time but no real expense. Mr. Adams noted the difficulty CDD #2 has encountered in finding a willing successor trustee.

Mr. Peterson voiced his support of approving nonpayment and locating a new trustee.

Mr. Brougham asked Mr. Hutton, of Greenberg Traurig, to comment on behalf of US Bank, as their legal representative. Mr. Hutton declined to comment.

Mr. Peterson asked who is responsible for locating a new trustee. Mr. Adams indicated that the District hires the trustee.

On MOTION by Mr. Curland and seconded by Mr. Brougham, with all in favor, withholding and/or suspending trustee payments, until further notice, was approved.

FIFTH ORDER OF BUSINESS

Developer's Report/Update

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

SIXTH ORDER OF BUSINESS

Engineer's Report

Mr. Cole presented Draw #73 for the 2005 Series bonds, in the amount of \$2,917.81. The draw is primarily for work relative to the water management district certification efforts and finalization of draft documents related to lake conveyance.

Mr. Brougham questioned when the next phase of lake erosion control will commence. Mr. Cole anticipated beginning work in April, once the water has receded. Mr. Brougham asked Mr. Cole if he had the opportunity to identify additional erosion, since the last inspection. Mr. Cole replied no but confirmed that an inspection will take place before the work begins.

In response to a question regarding the road conditions at Marshfield Runaway Bay and whether the repairs would be made from bond funds, Mr. Brougham replied no, as the road was not built with bond funds.

Mr. Schutt asked if the work on the lake banks contributed to the cloudiness of the lakes. Mr. Cole indicated that cloudiness occurred when the work was done but it should have cleared long ago.

SEVENTH ORDER OF BUSINESS

Update: Draft of Revised Security Contract Agreement with The Foundation

Regarding the revised security contract with The Foundation, Mr. Adams reported that The Foundation is not interested in proceeding with the revised contract at the present time. He indicated that the drafts are ready but The Foundation wants the matter deferred to a later date. Mr. Adams confirmed that the matter relates to the proposed continuing services agreement.

Mr. Curland recalled Mr. Adams' comments, at a prior meeting, that he wanted to have the contract completed and wants the continuing services agreement to be part of the renewal contract. Mr. Curland asked Mr. Adams to explain what changed since those comments. Mr. Adams clarified that he spoke his preference but was not speaking on The Foundation's behalf; both parties must be willing to do this and The Foundation does not want to proceed, at this time. In response to a question of why The Foundation does not want to proceed, Mr. Adams stated only that The Foundation wants to defer it. Mr. Curland alleged that Mr. Adams represents both the District and The Foundation and reiterated his question regarding why The Foundation wants to defer the matter. Mr. Adams clarified that he does not represent The Foundation.

Mr. Brougham indicated that the contract currently in place is the renewal of the previous contract with a ratified increase in the cap; the District is under contract with The Foundation.

Mr. Curland voiced his opinion that that the purpose of the continuing services agreement is for the District to know its future exposure and, if The Foundation is unwilling to have a continuing services agreement, the Board should prepare a position statement on how it will handle the District's situation, going forward. Mr. Curland noted that the District currently has essentially an open-ended contract that continues to increase with no discussion by the Board; the increased figure is automatically placed in the budget each year. Mr. Brougham indicated that the contract is not open-ended; it is a one (1)-year contract that is renewable each year or terminable at any point. Mr. Brougham recommended discussing the security budget during budget discussions for the coming fiscal year.

Mr. Curland pointed out that CDD #1 is held hostage by the decisions of CDD #2, with regard to the security contract. He noted that, if CDD #2 agrees to the amount, CDD #1 is left with no option but to go along with it, unless they want to obtain separate security for the District, apart from CDD #2, although CDD #1 pays two-thirds of the costs. Mr. Brougham acknowledged Mr. Curland's comments as factual but declined to comment on whether the situation is fair to CDD #1. Mr. Brougham referred to the interlocal agreement and indicated that discussion of the fairness of the cost share split is another matter.

Mr. Curland recalled that one (1) of the reasons the Board agreed to extend the contract was because they would move forward with the continuing services agreement but that aspect is now not going any further. Mr. Brougham indicated that the District moved forward with the agreement but was met with an unwilling partner in The Foundation. Mr. Curland contended that The Foundation is holding the District hostage by their refusal.

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

Mr. Adams presented proposals for a replacement security vehicle. He indicated that the Ford Taurus, without the interceptor package, was the lowest quoted price, at \$20,807. Mr. Adams recalled Mr. Albeit's comments at the last meeting stating that the non-interceptor equipped Taurus would be acceptable.

Mr. Adams discussed the condition of the current vehicle.

Mr. Albeit indicated that he does not have a preference of the vehicles; the Taurus is adequate. Mr. Albeit recommended a 24-month term, as the current vehicle had a lot of expenses during its third year.

Mr. Peterson asked if a 4-cylinder vehicle is available. Mr. Adams indicated 6-cylinder is all that is available in comparable vehicles. Mr. Peterson pointed out that fuel consumption must be a major expense and voiced his feeling that a 4-cylinder would make more sense. Mr. Peterson reiterated his question regarding whether there is a 4-cylinder option. Mr. Albeit acknowledged that there are models on the market but the vehicle's smaller size would be physically uncomfortable for his staff. It was noted that the 2013 Taurus is available in a 4-cylinder. Mr. Adams will research pricing for a 4-cylinder but recommended approving the expenditure based on the 6-cylinder vehicle, so he can proceed.

Discussion ensued regarding whether a 4-cylinder vehicle will experience more engine problems, due to the high mileage. Mr. Peterson questioned if there is evidence demonstrating that a 6-cylinder vehicle is more reliable than a 4-cylinder. Mr. Peterson asked if Mr. Albeit's comments are based on research or simply his opinion. Mr. Albeit acknowledged that research would be necessary or might be available from Ford. Mr. Peterson voiced his opinion that there would be a significant cost difference between the 4 and 6-cylinder vehicles.

Mr. Dave Yates, a resident, asked if the Board is considering a diesel vehicle, as they require less maintenance and have much better mileage. Mr. Adams indicated that there is a premium on the capital cost of a diesel vehicle and, although maintenance is less frequent, it is more expensive. Mr. Adams indicated that he does not believe that Ford makes diesel cars.

In response to a question, Mr. Adams indicated the vehicle does not come equipped with the police wiring; the District must have it wired and install the light bar, at a cost of \$2,000 to \$3,000.

Mr. Brougham felt that it is necessary to make a decision now, based on the condition of the current vehicle. Mr. Curland questioned why the decision cannot be delayed 30 days to obtain the requested information. It was noted that the information could be available within 30 days. Mr. Curland pointed out that Mr. Brougham's motion does not allow for discussion at next month's meeting. Mr. Peterson stated that the only thing missing from Mr. Brougham's motion was confirmation that, if a comparable 4-cylinder is available, the 4-cylinder would be the Board's preference, subject to reliability. Mr. Adams suggested that if the District can find a 4-cylinder that does not exceed the quoted price and reliability is favorable, then the District could proceed with a 4-cylinder vehicle. Mr. Adams felt that he could obtain the necessary information within a few days and proceed. Mr. Brougham corrected Mr. Adams, noting that he must have CDD #2's concurrence, as well.

Mr. Curland pointed out that, again, even if CDD #1 votes one way but CDD #2 does not go along, then CDD #1 gets nowhere on the issue. Mr. Brougham voiced his opinion that CDD #2 would agree.

Mr. Brougham's original motions proceeded without inclusion of Mr. Adams' suggestion to proceed with a comparable 4-cylinder vehicle, if available.

On MOTION by Mr. Brougham and seconded by Mr. Bergmoser, with Mr. Brougham, Mr. Bergmoser and Mr. Slater in favor and Mr. Curland and Mr. Peterson dissenting, the purchase of the 6-cylinder Ford Taurus security vehicle, in a not-to-exceed amount of \$20,807, subject to a two (2)-year replacement strategy and directing investigation of the 4-cylinder Taurus option, in terms of mileage and reliability, to be considered by the Board in 18 months, was approved. (Motion passed 3 – 2)

NINTH ORDER OF BUSINESS

Approval of October 24, 2012 Regular Meeting Minutes

Mr. Brougham presented the October 24, 2012 Regular Meeting Minutes and asked for any additions, deletions or corrections. The following changes were made:

Line 160: Change "affect" to "effect"

Line 167: Insert "up to" prior to "\$10,000"

The following changes were submitted made by Ms. Martinez Molina, prior to the meeting:

Line 47: Change "attorneys, in the amount of \$1.5 million" to "attorneys for approximately half a million dollars"

Line 53: Change "three (3)" to "several"

Line 57: Add "without such details" at the end of the sentence

The following additional change was made:

Line 313: Change "gear" to "gate"

On MOTION by Mr. Schutt and seconded by Mr. Bergmoser, with all in favor, the October 24, 2012 Regular Meeting Minutes, as amended, were approved.

TENTH ORDER OF BUSINESS

Other Business

Mr. DiNardo suggested that the Board ask Mr. Hutton if US Bank is taking any of the District's funds from its trust accounts to pay for his services. Mr. DiNardo feared that if the Board does not put Mr. Hutton on notice, the trustee will utilize other bonds and reserve accounts to pay their legal fees. Mr. DiNardo pointed out that Mr. Hutton is attending the District's meetings, charging his going rate to US Bank but the District has no actions against US Bank; however, they are taking money out of the District's accounts.

Mr. Brougham asked Mr. Hutton if he heard Mr. DiNardo's comments and asked Mr. Hutton who pays him for attending the District's meeting. Mr. Hutton indicated that his client, US Bank, pays his fees. Mr. Brougham asked Mr. Hutton who reimburses US Bank, if they are paying him for his services and where US Bank gets money to pay him. Mr. Hutton indicated that he is not prepared to answer Mr. Brougham's question.

Mr. Brougham asked Mr. Pires to report, at the next meeting, on the types of actions the District must take to preclude US Bank, as trustee, from utilizing any additional money for legal services, from any funds, to pay for attendance at the District's meetings. Mr. Pires voiced his opinion that, if the withdrawal of funds by the trustee results in the District being in default under the bond covenants, the trustee should consider that issue.

Mr. Brougham voiced his displeasure with the antics of US Bank and their legal representation.

ELEVENTH ORDER OF BUSINESS

Staff Reports

A. Attorney

Mr. Pires indicated that he received documents from Mr. Cole regarding the lake conveyance matter and it is a work in progress.

B. Manager

i. Unaudited Financial Statements as of October 31, 2012

Mr. Brougham presented the Unaudited Financial Statements as of October 31, 2012. He questioned the assessments receivable amount and asked Mr. Adams from whom it is receivable. Mr. Adams must research the matter; the amounts appear to be older assessments for which the certificates did not sell. Mr. Curland questioned what happens to unsold tax certificates. Mr. Adams indicated that sometimes the county takes them and the District would still be paid; in this case, they remain unsold and must be resolved as part of a land transaction, upon sale of the property. Mr. Brougham asked Mr. Adams to find out the tax collector's intentions.

Mr. Brougham noted an item of concern and asked Mr. DiNardo what can be done so that the District receives the developer's monthly off-roll assessments on time. Mr. Brougham indicated that the October payment was not received until November 21, 2012.

Mr. Peterson asked about the insurance expenditure and questioned if all insurance has been paid. Mr. Adams replied affirmatively and confirmed that 25% savings was realized for the insurance expenses.

ii. NEXT MEETING DATE: December 19, 2012 at 8:00 A.M.

The next meeting is scheduled for December 19, 2012 at 8:00 a.m.

C. Operations Manager

Ms. Crismond reported that Management toured the lakes last week and noted that the littoral plantings look good. The landscape maintenance contract expires January 31, 2013. The pre-bid meeting was held November 15 and bids will be presented for consideration at the December meeting. Ms. Crismond indicated that five (5) companies attended the pre-bid meeting. Regarding the Mahogany Bend Lift Station, Ms. Crismond advised that the Board previously approved a not-to-exceed cost of \$2,525 and Management is awaiting final approval from the county and The Foundation, prior to commencing with installation.

White fly treatments continue; the arborist is reviewing the entire property and will issue a second opinion. A question was raised regarding the ficus trees on Fiddler's Creek Parkway. Ms. Crismond confirmed that the trees are not dead; they are being treated with root injections for the white fly. In response to a question, Ms. Crismond stated that, should the trees perish, the contractor is responsible for replacing them, at their expense. Ms. Crismond indicated that ficus hedges are being and will be replaced in several areas. She confirmed that the arborist can determine whether a tree is dead; she will not rely on TruGreen.

Mr. Brougham asked that ficus trees that are removed be replaced with a different type of tree.

Discussion ensued regarding what can be done to address the white fly situation. Mr. Brougham asked that each village be asked if they have an active white fly spraying program underway.

Regarding replacement of ficus hedges, Mr. Adams advised against replacing the ficus with a different type of hedge in those areas where only a section of a long-running hedge requires replacement. It was noted that several villages do not have their own landscaper; residents maintain their own.

The Board voiced its consensus to direct Staff to formally request that Mr. Albeit send a letter to the community.

Mr. Adams noted that the spiraling white fly is beginning to create issues with other types of vegetation, particularly in preserves and lakes where spraying is prohibited. Mr. Brougham asked that Mr. Albeit report his actions to the Board at the next meeting.

Regarding the landscape renovation program, Ms. Crismond indicated that Mr. Albeit reviewed the plans and is agreeable to the species but wants Management to confirm with the

architect that the locations are suitable for the suggested plant types. Ms. Crismond will confirm with the architect.

A Board Member commented on the sidewalks that were cleaned. Regarding the test section, Ms. Crismond indicated that pictures are being taken and noted that the chemical test area is whiter than the pressure cleaned areas. She confirmed that the test areas were not pressure cleaned. Ms. Crismond advised that Cherry Oaks Lane was cleaned, not Cherry Oaks Trail. Ms. Crismond asked for a cost estimate for Cherry Oaks Trail, which was \$5,000. She obtained a quote from the former pressure cleaner who will clean Cherry Oaks Trail for \$1,300; he will commence work this week. Ms. Crismond was not sure why the current contractor’s quote was so high. In response to a question, Ms. Crismond confirmed that the wrong street being cleaned was her fault.

Ms. Crismond reviewed the patrol statistics. She indicated that, beginning in December, there will be two (2) patrols per week, through April. Mr. Brougham was pleased to see that 12 citations were issued.

Mr. Adams provided a handout detailing the account detail for the access control contractual services for Fiscal Year 2012. This is in response to a previous inquiry regarding being over budget for this line item. Mr. Adams indicated that he may have misspoken at the last meeting and advised that this is not a creditable item under the miscellaneous income. He noted that the real issue is that the contract year does not match perfectly with the fiscal year. Mr. Adams presented the transaction account detail by account. He explained that the District’s prorated share of the security expense is 69% and, after the October billings, the variance between the budget and actual expenditures, as of October 31, 2012, was \$2,563.55. Mr. Adams confirmed that Management will not pay any costs in excess of the contract cap amount.

TWELFTH ORDER OF BUSINESS

**Audience
Requests**

Comments/Supervisors’

Mr. Yates noted that wildlife in the community has increased. He identified bears in a particular area and stated that he spoke with Mr. Charbonneau to determine if The Foundation can do anything. Mr. Charbonneau indicated that security can do nothing about the wildlife problem. Mr. Yates met with Florida Fish and Wildlife, who advised him that, as long as the wildlife is not causing damage, harm or threatening anyone, nothing can be done. One of the

bears is tagged and moves primarily around CDD #1. Mr. Yates stated that fruit trees attract bears, along with garbage cans. Mr. Yates recommended notifying residents of the bear problem.

Mr. Brougham indicated that Mr. Albeit should address this matter through an eblast to residents; the District does not have the ability to notify residents. Discussion ensued and Mr. Brougham advised that fruit trees are not allowed in the community.

A Board Member questioned why alligators are removed when there is a complaint but the bears cannot be removed. Mr. Yates indicated that, according to Florida Fish and Wildlife, the bears cannot be removed.

THIRTEENTH ORDER OF BUSINESS

Adjournment

There being nothing additional to discuss, the meeting adjourned.

**On MOTION by Mr. Curland and seconded by Mr. Slater,
with all in favor, the meeting adjourned at approximately 9:20
a.m.**



Secretary/Assistant Secretary



Chair/Vice Chair