

**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, February 27, 2013, 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
Terry Cole	District Engineer
Tony Pires	District Counsel
Ron Albeit	Foundation Manager
Aleida Martinez Molina (via telephone)	Weiss Serota, Special Counsel
Tony DiNardo	Developer
Bill Reagan	FMS Bonds
Dale Slabaugh	Landscape Architect
Jim 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

Developer's Report/Update

******This item, previously the Third Order of Business, was presented out of Order.***

Mr. DiNardo indicated that he had no updates.

Mr. Brougham asked Mr. DiNardo if he will be able to respond to Mr. Adams' email, as a follow up to the District's request for a vote of the bondholders on reimbursing the District for

legal expenses. Mr. DiNardo stated that Mr. Adams must send it to the bondholders' attorney, who will respond.

Mr. Brougham commented that the "Community of the Year" signs look great; however, someone should have notified the District, prior to installing them on the District's light pole.

THIRD ORDER OF BUSINESS

Update: 1999 Series Bonds Refunding Activities (to be provided by Mr. Bill Reagan)

****This item, previously the Fourth Order of Business, was presented out of order.****

Mr. Bill Reagan, of FMS Bonds, recalled discussing refinancing the 1999 Series bonds a few months ago. He hoped to have everything ready for today; however, there are minor delays. He assured the Board that things are nearly completed.

Mr. Reagan stated that the bonds were issued in 1999, when the land was raw. As the land is now built out, the District is in a position to refinance the bonds, much like a homeowner would refinance their mortgage. He indicated that the District should realize annual savings of approximately 20%, after factoring in all costs. Mr. Reagan confirmed that the savings will be passed along to the property owners; for example, if their taxes were \$1,000, the 20% savings would bring it to \$800. He stated that the challenge is that this only covers the 1999 Series bond area.

Mr. Reagan advised that the timeline is to present the completed documents in March, for the Board's approval and close by late April or early May. Mr. Reagan was confident that the market will hold up through that time. He added that the District might be in a position to refund the 2006 Series bonds, as well. Mr. Reagan noted that sharing costs between the two (2) refundings would save costs. He noted that the 2006 Series bonds could probably be rated.

Mr. Brougham felt that refunding both is of consideration, especially if it benefits the homeowners. He asked Mr. Reagan to ensure that the documents are provided to all Board Members prior to the meeting.

FOURTH ORDER OF BUSINESS

Special Counsel Update: Bankruptcy Proceedings

****This item, previously the Second Order of Business, was presented out of Order.****

Ms. Martinez Molina reported that there were no new developments related to the bankruptcy.

Mr. Brougham asked the Board if they wish to continue keeping Ms. Martinez Molina on retainer.

Mr. Slater stated that he was in favor of retaining Ms. Martinez Molina but only having her call in and report when necessary. Supervisor Brougham preferred to discontinue using Ms. Martinez Molina's services.

Mr. Adams suggested maintaining Ms. Martinez Molina's engagement but asking her to no longer track the bankruptcy case.

Ms. Martinez Molina asked if the Board wishes for her to withdraw her appearance as counsel in the bankruptcy case. Mr. Pires explained that would mean that Ms. Martinez Molina would no longer receive copies of filings in the bankruptcy case, bringing to light the question of how the District would then receive those documents. Ms. Martinez Molina stated that, without an attorney making an appearance, the District would not receive notices of any filings; however, the District would be on the mailing list so, if there is something that requires the District to be noticed, it would be sent to the District's representative by mail.

In response to Mr. Slater's question, Ms. Martinez Molina stated that the notice would be through regular mail.

Mr. Brougham found this acceptable.

Ms. Martinez Molina stated that she will withdraw her appearance and advise the courts accordingly, at which time, the court would direct any significant matters to the District's registered agent.

FIFTH ORDER OF BUSINESS

Discussion: Trustee and Paying Agent Fee Schedules

- A. Series 1999 A/B Special Assessment Bonds: US Bank**
- B. Series 2002 Special Assessment Bonds: SunTrust Bank**
- C. Series 2006 Special Assessment Revenue Refunding Bonds: US Bank**

Mr. Adams presented and reviewed the trustee and paying agent fee schedules. He recalled the Board's request not to pay any further fees to the trustee until copies of the fee

schedules were received. Mr. Adams confirmed that the fee schedules match the amount that the trustee bills the District.

Mr. Adams advised that Wilmington Trust's fee schedule is in line with what the District has been paying. He noted that he reviewed the fees, applicable to each bond series. Mr. Adams stated that Wilmington Trust is asking for a one (1)-time \$1,000 acceptance fee, an annual administration fee of \$300 per \$1 million of bonds, a termination fee and a fee of \$450 per hour for extra administration work.

Mr. DiNardo pointed out that the fee schedule for the 2005 Series bonds was not included. He explained that, in CDD #2, the judge ruled with a temporary injunction on the trustee taking money from the construction fund. CDD #1's trustee did take money from the construction fund. Mr. DiNardo stated that, since U.S. Bank stated that the District's 2002 and 2005 Series bonds are in default, the bondholders want the Board to change trustees. He felt that staying with U.S. Bank will make things more complicated. Mr. DiNardo urged the District to hire Wilmington Trust as its indenture trustee.

Mr. Brougham stated that this is consistent with previous input and the Board's consensus, at the last meeting. He noted that he has questions about Wilmington Trust's fees and asked Mr. Adams for something more specific, such as a comparison sheet.

In response to a question, Mr. Adams confirmed that U.S. Bank is the trustee for all of the bond series and that the trustee's fee does not change or adjust.

On MOTION by Mr. Curland and seconded by Mr. Bergmoser, with all in favor, authorizing bond counsel and other District Staff and consultants to prepare the necessary documents, including termination of U.S. Bank, as trustee for all bond series and preparation of documents naming Wilmington Trust, as the replacement trustee, was approved.

SIXTH ORDER OF BUSINESS

Discussion/Consideration: Proposal from Wilmington Trust to Provide Successor Trustee Services

This item was addressed during the Fifth Order of Business.

Mr. Brougham asked Mr. Adams to provide a comparison of fees, for the Board's review.

SEVENTH ORDER OF BUSINESS

**Presentation by Landscape Architect and
Consideration of Understory Plant
Replacement Program Proposals**

A. Sunny Grove Landscaping, Inc.

B. The Brickman Group, Ltd.

Mr. DiNardo recalled that The Foundation responded to the Board, based on a review of the plans and the ficus replacement strategy and asked if that response was provided to the landscape architect. Ms. Crismond replied affirmatively. Mr. Brougham asked Ms. Crismond if a response was received from The Foundation. Ms. Crismond stated that a response was not received. Mr. DiNardo disagreed, stating that Ms. Crismond received a response. Ms. Crismond reiterated that she did not. Mr. DiNardo disagreed again.

Mr. Brougham asked if the letter approved the plan. Mr. DiNardo replied no, stating that it discussed changes and recommendations to the plan. He indicated that there were two (2) letters. One (1) letter contained a strategy for replacing ficus.

Mr. Dale Slabaugh stated that he was hired by Ms. Crismond and the Board to evaluate the existing landscape buffers along sections of the major roadways, as they related to neighborhoods, views and exposure, due to the decline of certain plantings. He stated that the reasons for the decline include old age, plants in shaded areas, etc. Mr. Slabaugh's plan is to replace deteriorated plants and, in some cases, plant in front of leggy shrubs. The plan begins at the park entrance, proceeds on both sides of the road, down Fiddler's Creek Parkway to Clubhouse Drive, continues to Sandpiper, on both sides of the road and includes Championship Drive. Mr. Slabaugh showed photographs of typical plantings.

Mr. Brougham asked if the photographs reflect different levels of plant maturity. Mr. Slabaugh stated that they do not. Mr. Brougham explained that he does not want plants that provide coverage to be removed and replaced with plants that open the areas and leave them open for a number of years. Mr. Slabaugh reiterated that his plan is to leave the existing canopy and plant in front of the leggy shrubs, to enhance the buffer, not remove it. He discussed appropriate plant sizes for the various areas.

Mr. Brougham voiced his concern about the abundance of arboricola in Mr. Slabaugh's plan and, while acknowledging that sameness can be good, he feels that variety is good. Mr.

Slabaugh stated that the goal was to develop a buffer plan, not to develop a specific, detailed garden plan. Mr. Slabaugh indicated that the plan can be modified.

Discussion ensued regarding using bougainvillea and Ms. Crismond pointed out that the bougainvillea was not included in the plans that went out for bid; it would need to be added. Mr. Slabaugh noted that, since this plan was developed, ficus removal is now being considered. Mr. Brougham voiced his opinion that phasing out ficus should be part of the plan. Mr. Slabaugh pointed out that aspect was not originally part of the program. Mr. Brougham agreed but stated that the plan will go through many iterations. Mr. Slabaugh continued detailing the various plants included in the plans.

Mr. Brougham recommended holding a landscaping workshop to modify the plan, once input from the Design Review Board is received.

Mr. DiNardo asked if the District has a timeline for completion. Mr. Brougham confirmed that the District would like to take advantage of the rainy season and have installation completed by June or July.

Discussion ensued regarding ficus trees affected by white fly and removal of dead trees.

Mr. Brougham requested that the landscaping workshop be held before the next meeting.

EIGHTH ORDER OF BUSINESS

Discussion/Update: Repaving of Certain Roadways as a Result of Recent Waste Management Oil Spill

Mr. Cole recalled that Waste Management (WM) had an oil spill in January. He stated that WM applied oil dry and attempted to pressure wash the stained areas. Several meetings were held to determine what needs to be repaired. Mr. Cole indicated that WM was to prepare and provide a proposal to repair the damage by February 4, 2013. He received a summary of events on February 5, 2013, along with WM's proposed paving repair areas. Mr. Cole met with Mr. Albeit and the Chairs to review the proposed paving repair areas and maps for each CDD, based on this inspection, are attached.

Mr. Cole stated that a response was sent to WM detailing coordination issues that needed to be addressed. WM did not respond by the requested deadline on Monday. WM informed Mr. Cole that the matter was turned over to their insurance company, who was supposed to have

contacted him but have not. Mr. Cole notified Mr. George Cascio, of Collier County, regarding the situation. Mr. Cascio assured Mr. Cole that he would push the issue with WM.

Mr. Brougham explained that Collier County is involved because WM is a county contractor.

Mr. Cole reviewed maps of the areas containing leaked oil and the degree of damage. WM feels that they can clean the paver blocks; however, Mr. Cole feels that if one (1) area is cleaned, the rest will need to be cleaned. Mr. Cole stated that there are various options including doing nothing, as the oil is not degrading the pavement. The other options involve seal coating, which will require resealing within a few years, or repaving of the road. Mr. Cole indicated that repaving is the best solution; however, he pointed out to WM that they could not repave only one (1) side of the road. A response from WM is pending.

Mr. Cole continued reviewing the maps showing the areas under consideration for repavement. He noted that there are coordination issues to be addressed with WM, including parking, dust control, etc. In response to a question, Mr. Cole confirmed that WM has not agreed to perform this work; the District is awaiting contact from the insurance company.

Mr. DiNardo suggested that CDDs #1 and #2 join together to hire a litigation attorney to send a letter to WM informing them of the potential damage this problem could do to real estate sales in Fiddler's Creek; he feels that might encourage action, for fear of a class action lawsuit.

Mr. Brougham supported Mr. DiNardo's suggestion.

Mr. Pires will prepare the letter.

Mr. Brougham discussed his preferred plan.

NINTH ORDER OF BUSINESS

**Discussion/Consideration: Legal
Description Boundary Amendment**

Mr. Pires recalled a few years ago when it was discovered that the legal description for CDD #1, when the panhandle was to be removed from CDD #1 and put into CDD #2 and replaced with comparable acreage, was incorrect. The legal description in the rule that established CDD #1 inadvertently maintained the panhandle within CDD #1, meaning the panhandle appeared in the legal description for both CDDs. Mr. Pires explained that the District boundaries must be amended to remove the panhandle from CDD #1.

Mr. Pires stated that the original Counsel no longer has his files. Discussion ensued regarding which party should pay to remedy the situation.

The Board directed Mr. Pires to notify Hole Montes and Young, van Assenderp of the issue and for them, as the originally involved parties, to correct the matter, at no cost to the CDD.

TENTH ORDER OF BUSINESS

Consideration of Amendments to Access Control Post Orders

Mr. Brougham indicated that there were minor language changes related to construction hours.

On MOTION by Mr. Slater and seconded by Mr. Bergmoser, with all in favor, the Amendments to Access Control Post Orders, as presented, were approved.

ELEVENTH ORDER OF BUSINESS

Update: Ficus White Fly Infestation, Abatement and Recovery Progress

Ms. Crismond indicated that no white fly were seen during Friday's inspection; treatments and recovery continue.

Mr. Brougham reported that a Village meeting was held with white fly experts explaining the problem. He stated that the Villages were informed that it is incumbent upon them to ensure that their landscapers have an ongoing treatment program; if a Village is delinquent or deficient, The Foundation would take steps to enforce the requirement. A Board Member clarified that the Villages were told that The Foundation would treat the white fly, if the Village did not but would bill the Village for the cost.

In response to a question, Ms. Crismond indicated that Management will oversee the white fly program for the CDDs; each Village is responsible for their own area. Mr. Albeit indicated that The Foundation will oversee to ensure that all of the Villages participate.

TWELFTH ORDER OF BUSINESS

Approval of January 23, 2013 Regular Meeting Minutes

Mr. Brougham presented the January 23, 2013 Regular Meeting Minutes and asked for any additions, deletions or corrections. The following change was made:

Line 21: Delete "(via telephone)"

On MOTION by Mr. Slater and seconded by Mr. Brougham, with all in favor, the January 23, 2013 Regular Meeting Minutes, as amended, were approved.

THIRTEENTH ORDER OF BUSINESS

Other Business

There being no other business, the next item followed.

FOURTEENTH ORDER OF BUSINESS

Staff Reports

A. Attorney

Mr. Pires had nothing additional to report.

Mr. Brougham asked Mr. Pires to send the letter to WM no later than Monday and to copy the Board.

B. Engineer

Mr. DiNardo asked for the status of the lake transfers. Mr. Cole reported that everything was completed for CDD #2 and will be presented to the CDD #2 Board today. Some of CDD #1's transfers will be more complicated; the strategy is to convert and transfer some applications, with the others taking longer to complete. Mr. Cole is working with South Florida Water Management District. Mr. Pires asked to be updated on this matter, as it progresses.

Regarding the lake erosion issues, Mr. Cole indicated that he finished evaluating the lakes again and revised maps will be provided to the contractor, in order to obtain pricing.

Mr. Cole presented Draw #76 for the 2005 Series bonds, in the amount of \$212.50. The draw was primarily for work related to lake conveyance.

It was noted that Mr. Cole was consulted regarding the electric for the flag pole to be installed at the main entrance.

C. Manager

i. Approval of Unaudited Financial Statements as of January 31, 2013

Mr. Adams presented the Unaudited Financial Statements as of January 31, 2013. He noted that assessment collections were at 65%. In response to Mr. Brougham's question, Mr.

Adams confirmed that assessment collections are a little low compared to last year; down approximately \$650,000 from budget. He confirmed that April 1 is the deadline.

Mr. Brougham referred to the balance sheet and noted that \$2.2 million is in SunTrust. Mr. Adams replied affirmatively and explained that the transfer to the Insured Cash Sweep (ICS) Program was completed in early February, as previously approved; however, it does not appear in the Unaudited Financial Statements because they are as of January 31, 2013.

Mr. Adams stated that the off-roll assessments are on target and expenses are in line. He pointed out the rentals and leases line item, under access control, noting that the \$14,011 amount is the District's portion of the outright purchase of the security patrol vehicle.

Mr. Brougham questioned the gate house repairs and maintenance line item amount. Ms. Crismond explained that repairs were needed at the main gate, as well as at Sandpiper. Mr. Adams stated that there were rotting wood issues, which were safety problems. Mr. Brougham asked for a detailed breakdown of the completed repairs.

ii. NEXT MEETING DATE: March 27, 2013 at 8:00 A.M.

The next meeting is scheduled for March 27, 2013 at 8:00 a.m.

D. Operations Manager

Ms. Crismond indicated that the raised pavement markings (RPMs) on Championship Drive were replaced for cost of \$500. Replacement on Fiddler's Creek Parkway and Club Center Drive are scheduled for the week of March 4. She noted that, technically, RPMs are not required on any roadways within the community. Sidewalk repairs were completed at the Parkway, abutting Pepper Tree.

Ms. Crismond reported that a fence panel broke on Mulberry and required replacement. She noted that only one (1) contractor performs this type of work on the west coast, which is why the repair took approximately four (4) weeks. Ms. Crismond brought to the Board's attention that a resident questioned why the District does not replace the entire fence. In response to the resident inquiry, Ms. Crismond requested a quote from Coastal Concrete and requested to have six (6) panels fabricated to have on site for future emergency situations. Discussion ensued regarding a storage location for extra panels. Ms. Crismond indicated that the panels are \$30 each, plus \$150 for delivery. Mr. Brougham directed Ms. Crismond to order five (5) panels. Mr. Brougham asked Ms. Crismond to obtain quotes to replace the fence on Mulberry, as well as quotes to replace the full length of Championship Drive.

Mr. Jim Yates, a resident, apologized, stating that the resident inquiry was blown out of proportion; he does not feel the entire fence needs to be replaced.

FIFTEENTH ORDER OF BUSINESS

**Audience
Requests**

Comments/Supervisors’

Mr. Yates noted that many were at The Foundation meeting last week and recalled a presentation about bicycle safety. He pointed out an area along Championship Drive, where the speed limit is seldom observed and it is only a two (2)-lane road. Mr. Yates explained that bicyclists cannot use the sidewalk, as it is used by pedestrians. He discussed the dangers from cars coming around curves, as it is difficult to see. Mr. Yates proposed making the sidewalk wider or installing a bicycle path along the unused and undeveloped area where the additional road lanes were to have been built.

Mr. Brougham directed Ms. Crismond to evaluate Championship Drive for blind spots related to vegetation and remove, as needed. He indicated that the alternative is to install a bicycle/walking path. Mr. Cole estimated the cost to be \$130,000 to \$150,000. Mr. Brougham suggested considering this during budget season.

Mr. Curland pointed out that Championship Drive was never meant to be a four (4)-lane road.


A resident commented that he fell onto Championship Drive while jogging off of the sidewalk. He noted that drivers along Championship Drive do not observe the crosswalk warnings and suggested installing road surface placards.

SIXTEENTH ORDER OF BUSINESS

Adjournment

There being nothing further to discuss, the meeting adjourned.

On MOTION by Mr. Slater and seconded by Mr. Bergmoser, with all in favor, the meeting adjourned at approximately 9:50 a.m.


Secretary/Assistant Secretary


Chair/Vice Chair