

**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, April 24, 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
James Curland	Assistant Secretary
Richard Peterson	Assistant Secretary
Robert Slater	Assistant Secretary

Also present were:

Chuck Adams	District Manager
Cleo Crismond	Assistant Regional Manager
Terry Cole	District Engineer
Tony Pires	District Counsel
Frank Wineberg	Resident
Jesse Fritz	Resident
Ron Albeit	Foundation Manager
Tony DiNardo	Developer

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, Peterson and Slater were present, in person. Supervisor Bergmoser was not present.

SECOND ORDER OF BUSINESS

Special Counsel Update: Bankruptcy Proceedings

Mr. Brougham suggested that this item be removed from future agendas. Mr. Adams requested that this item remain on the agendas as a reminder.

Mr. Brougham indicated that, in the course of the correspondence regarding the bond refunding, Management was advised by the developer that the May 1 bond payments were proposed to not be made. He stated that was in concurrence between the developer and the

bondholders. Mr. Brougham asked Mr. DiNardo if nonpayment was contrary to the bankruptcy settlement agreement where the first payment was to be made May 1.

Mr. Brougham read a statement from Ms. Aleida Martinez Molina, Special Counsel, regarding this matter:

“As discussed, to the extent third parties agree amongst themselves to take action which would A) technically impede the CDD from performing its obligations and B) not comport with bankruptcy court orders, the CDD should request the developer file an appropriate document with the bankruptcy court to reflect this agreement (deviating from the court’s orders). Barring the developer filing such a document, the CDD should otherwise bring it to the court’s attention.”

Mr. Brougham indicated that the District goes into technical default, if payments are not made, which leads the District to file foreclosure actions against the property.

Mr. Adams stated that he will take care of this. He reported that Ms. Martinez Molina referred to this as a “comfort filing”; essentially putting the court on notice, for its records, of the agreement amongst all impacted parties, which deviates from the original schedule. He noted that the District could do this anyway through a forbearance agreement with the bondholders, if a unique circumstance arises and everyone agrees to push the payment schedule. Mr. Adams indicated that, out of an abundance of caution, Ms. Martinez Molina felt that the District should take actions to have the necessary document filed, to avoid future issues.

Mr. Pires felt that it was appropriate for Mr. Adams to work with Ms. Martinez Molina and authorize her to prepare and file any necessary documents.

In response to a question, it was confirmed that the bondholders and developer agreed to delay payment of the bond principal of approximately \$3.8 million. Mr. Brougham stated the thought was that there was desire, on the part of the bondholder/developer, to exchange the “old” bonds for “new” bonds, which would start anew with a new maturity date, etc.

Regarding the May 1 payment, Mr. Pires indicated that it relates to the 2002 and 2005 bonds; the issue arose as the consultants were preparing the draft Preliminary Offering Memorandum on the refinancing of the 1999 bonds. Mr. Brougham concurred and stated that this had to be disclosed during the refunding. Mr. Adams confirmed that it is being disclosed in the memo of filings; he felt that the matter is covered.

On MOTION by Mr. Slater and seconded by Mr. Peterson, with all in favor, authorizing the District Manager to draft a letter, in consultation with Bankruptcy Counsel, to the developer asking them to file the document and, if not, authorizing Bankruptcy Counsel, in consultation with Bond Counsel, to make the appropriate filing, by a specified date, was approved.

THIRD ORDER OF BUSINESS

Developer's Report/Update

There being no report, the next item followed.

FOURTH ORDER OF BUSINESS

Update: Refinancing of Series 1999 Bonds

Mr. Adams indicated that work on the documents continues, including collecting the necessary information to make the proper disclosures in the Preliminary Limited Offering Memorandum (PLOM). Mr. Bill Reagan, of FMSbonds, informed Mr. Adams that the PLOM was posted yesterday, pricing is expected by next Wednesday or Thursday, with pre-closing following two (2) weeks later and the final closing on May 21, 2013.

Mr. Brougham recalled that the Board approved and authorized hiring Wilmington Trust as the District's new trustee. The paperwork was executed by the District and sent to Wilmington Trust. The refunding documents list Wilmington Trust as the trustee. Mr. Brougham indicated that Wilmington Trust had not signed the documents to become the new trustee because they, along with Fiddler's Creek CDD #2, were sued by U.S. Bank. He stated that the lawsuit caused Wilmington Trust to question whether they wanted to become involved in the matter. Mr. Brougham participated in a conference call with Mr. Pires, Mr. Reagan and representatives from Wilmington Trust. He explained that U.S. Bank is willing to remain the trustee, through the refunding process, with Wilmington Trust becoming the trustee, subsequently, if they remain willing.

Mr. Curland pointed out that the District intends on proceeding with U.S. Bank, through the refunding, in spite of the ongoing issues, and asked if U.S. Bank is showing the District any consideration regarding the problems. Mr. Brougham indicated that the issues were not discussed. Mr. Curland asked if the District received responses to any of the letters that were sent to U.S. Bank. Mr. Brougham stated that Mr. Adams received a response from the attorney

for Fiddler's Creek Investor XYZ bondholders regarding the District's request for a bondholder vote on reimbursement; U.S. Bank has only responded to the request for a vote of the bondholders.

Mr. Brougham advised that U.S. Bank has not received correspondence from the District firing them as trustee.

Mr. Pires stated that, according to the trust indenture, the District must have a replacement trustee, in order to fire U.S. Bank. He noted that Wilmington is not currently willing to become the trustee, due to the pending litigation filed against them and CDD #2, by U.S. Bank. Mr. Pires recalled that CDD #2 explored other entities; however, Wilmington Trust was the only one willing to become the new trustee.

Mr. Brougham acknowledged Mr. Curland's angst; however, he feels that the District must proceed now with U.S. Bank continuing as the trustee during the refunding and revisit the matter with Wilmington Trust at later date.

Regarding the PLOM first draft, Mr. Brougham indicated that it contained new language, which raised concerns with Mr. Pires. Essentially, the new language would have given the trustee blank checks, such that it would direct the CDD to do whatever the trustee instructed, period, with no recourse for the District. Mr. Brougham stated that this raises hackles, considering the issues the District has already encountered with U.S. Bank. Also, it raises the question of who will pay U.S. Bank's future legal fees. Mr. Brougham confirmed that he was unwilling to move forward with the unacceptable new language, so it was stricken from the agreement.

Mr. Pires indicated that the language in the most recent version is appropriate.

Mr. Frank Wineberg, a resident, voiced his confusion regarding Wilmington Trust's reluctance to contract with the District because of a lawsuit involving CDD #2. Mr. Brougham indicated that Wilmington Trust is in the middle of the issues; CDD #2 already hired them as their trustee, and both were subsequently sued by U.S. Bank. Mr. Brougham reiterated that Wilmington Trust is not willing to become CDD #1's trustee, since they were sued for becoming CDD #2's trustee.

Mr. Jesse Fritz, a resident, questioned proceeding with U.S. Bank, given the problems.

Mr. Brougham stressed that the District wants the savings of 10% to 14% that the refinancing brings. Despite the situation, he feels that the District must move forward with U.S. Bank, through the refunding, and approach Wilmington Trust, in the future.

FIFTH ORDER OF BUSINESS

Continued Discussion: Refunding of 2006 Bonds

Mr. Adams indicated that refunding of the 2006 bonds is moving forward. Mr. Brougham discussed the refunding timeline.

SIXTH ORDER OF BUSINESS

Update: Legal Description Boundary Amendment Communications/Activities

Mr. Pires indicated that he will follow up with Hole Montes and the attorney today.

Mr. Pires recalled that when CDD #2 was created, a portion of the property came from CDD #1 and equivalent acreage went into CDD #1. It was discovered that the documents in the application were correct; however, the final document’s legal description still includes the part that was removed from CDD #1. Mr. Pires explained that the District boundaries must be amended to remove a portion of land from CDD #1.

SEVENTH ORDER OF BUSINESS

Update: WMI/Collier County Roadway Resurfacing

Mr. Brougham indicated that the insurance adjustor for Waste Management (WM) continues to slow play this matter. WM is obtaining additional estimates. WM wants to complete the matter by the end of May; however, the District wants to set the schedule. Mr. Brougham stated that WM was advised that, once they obtain a satisfactory bid, a series of meetings and communications will be initiated with CDD #1 and CDD #2 involved residents regarding the details, coordination and safety. He noted that the Districts must follow up with the selected contractor regarding what they will do, how, when and where, etc. Mr. Brougham stressed the need for CDD #1, CDD #2 and The Foundation’s oversight of the project.

In response to a question, Mr. Brougham stated that WM will select the contractor to complete the resurfacing project; however, the Districts will have timing and oversight of the project. He confirmed that WM agreed to resurface both sides of the road.

EIGHTH ORDER OF BUSINESS

**Continued Discussion: Lake Littoral
Plant Permit Requirements Versus
Community Expectations**

After reviewing the documents provided by Mr. Adams and visiting Montreaux Lake, Mr. Curland voiced his concern that the Board was arbitrary in its decision, at the last meeting, to do nothing to address the residents' concerns. He stated that the documents contain no standard by which the Board based its decision. Mr. Curland noted there are many lakes with the same issues. Having a better understanding of the residents' position, Mr. Curland asked the Board to discuss establishment of a standard by which the District measures the amount of lake intrusion that is allowable, acceptable or reasonable; with anything beyond that amount, the District will take action to limit further encroachment.

Mr. Curland stressed that he is not speaking of just one (1) lake; the standards should be applicable to all lakes that have littoral plants.

Mr. Cole reviewed a map containing a summary of littoral shelf requirements. He stated that, under the old method, the basis used for the predominate number of lakes was 10% of the perimeter, with a width of 10' to 20'. The definition of littoral area is based on elevation in regard to control elevation. Mr. Cole indicated that the county later changed the requirement to 7% of the surface area, which makes the requirement more or less, depending on the shape of the lake. He explained that a long lake, having a greater perimeter, would require more littorals.

Mr. Cole stated that 18.2 acres of littoral area were needed, when the analysis was completed, and the District had 19.8 acres, at the time. He indicated that this figure does not include every lake, only those that were reviewed. This information was provided to the county and Ms. Crismond. Mr. Cole explained that littoral areas can be clumped into a single lake, if approved by the county, which is what occurred in certain locations. He recalled discussion, at the last meeting, regarding plant growth that now exceeds the area initially planted. Mr. Cole reiterated that Collier County's requirement is either 10% of the lake, based on the old lakes, or 7% of the surface area, for newer lakes.

Mr. Slater pointed out that Mr. Cole only mentioned the minimum requirement and questioned if there is a limit; does the county allow littorals to take over an entire lake. Mr. Cole advised that a takeover should not occur, as the lake depths will be too deep, at the center of the lake. Mr. Slater questioned if there is precedent to not let littorals grow wild.

Mr. Peterson discussed the benefits of littorals for erosion control, water quality and lake habitats.

Noting comments that littorals will only grow to a certain area, due to lake depths, Mr. Slater wondered if the slope is so gradual that it is allowing growth further into the lake. Mr. Brougham agreed that the slope in the subject lake is too gradual.

Mr. Fritz stated that the littoral planting was all completed under the premise of stopping erosion. Mr. Brougham indicated that Mr. Fritz's comment was untrue; erosion control is one (1) purpose but not the only purpose.

Mr. Brougham discussed that, even if the minimum required amount is installed, it can exceed the minimum requirement, due to years of growth. He stated that he reviewed aerial photographs from over the years, which clearly reflect the continued spread of littoral plants. Mr. Brougham concluded that the subject lake was planted in early 2000 to conform to the county's minimum requirements but has now grown and spread. He asked Mr. Cole to comment on requirements or restrictions that would allow the District to selectively remove areas of littoral plants.

Mr. Cole referred to the Collier County Code Requirements and stated that he saw no removal provisions, either way. It mentions anticipated coverage of 80% within two (2) years. Discussion ensued regarding lake depths, depending on the season, and the littoral shelf width. Mr. Fritz suggested that scooping the shelf is a possible option.

Mr. Cole found that the code states "80% vegetative coverage of the shelf is required within a two (2)-year period following the initial planting and shall be maintained in perpetuity". He confirmed that this means 80% of the minimum amount is required; the District has more than 80%. Mr. Cole recalled work on the golf course which may have created certain shelves.

Mr. Brougham concluded that nothing in the District's permit or the county's regulations prohibits or speaks to removal of excess littoral vegetation; therefore, it appears to be a policy decision of the Board, regarding what it will allow to be selectively removed. Mr. Cole concurred with Mr. Brougham's conclusion.

Mr. Brougham voiced his opinion that the littorals are healthy, benefit the lake and should be left alone. Mr. Peterson supported Mr. Brougham's opinion.

Mr. Curland asked if the conditions are the same on other lakes within the community. Ms. Crismond indicated that some lakes are the same but other lakes have different amounts. Mr. Brougham pointed out that some lakes have no littorals.

Mr. Brougham stated that the District can embark on established criteria for removal of portions of the littoral plants, when complaints are received, or the Board can agree to do nothing, on the premise that the littorals serve a purpose. Mr. Brougham indicated that he and Mr. Peterson prefer to do nothing.

Mr. Curland suggested obtaining input from an aquatics expert in order to establish a standard and address complaints as they arise. Noting that trees are trimmed every year, Mr. Slater questioned why the District would do so, if the Board's stance is to let everything remain natural. Mr. Brougham acknowledged Mr. Slater's comment.

Mr. Slater felt that the littoral shelves should remain as they are.

Mr. Cole suggested that he can review the plans from The Rookery Golf Course to determine the littoral planting plan, which will identify where the littoral shelf is supposed to be.

Mr. Brougham stated that, at this time, the District will do nothing. He recommended reviewing the information that Mr. Cole gathers, as well as input from a county representative, regarding littoral plants.

NINTH ORDER OF BUSINESS

Approval of March 27, 2013 Regular Meeting Minutes

Mr. Brougham presented the March 27, 2013 Regular Meeting Minutes and asked for any additions, deletions or corrections. The following changes were made:

Line 103: Change "DiNardo" to "Pires"

Line 139: Change "Debost" to "Deboest"

Line 325: Change "seconded by Mr. Peterson" to "seconded by Mr. Curland"

Line 327: Change "Mariner" to "Marine"

Line 390: Change "Montrose" to "Montreaux"

On MOTION by Mr. Slater and seconded by Mr. Curland, with all in favor, the March 27, 2013 Regular Meeting Minutes, as amended, 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

Mr. Pires had nothing additional to report.

B. Engineer

Mr. Cole presented Draw #77 for the 2005 Series bonds, for approximately \$3,400. The draw was primarily for work related to the SFWMD permit transfers and conversions. He met with Mr. Pires to review documents. Another extension will be requested from SFWMD. He reported that SFWMD is happy to grant the extension; everything related to CDD #2 was submitted. Mr. Cole and Mr. Pires identified areas that will be easier to process.

Mr. Curland noted several areas in CDD #1 that are designated as “park” areas. He indicated that two (2) of those acreages were purchased by The Foundation and asked how many other acreages have the potential to be owned by the developer and not by the District. It was noted that the District entered into license agreements to maintain those areas, a number of years ago. Mr. Curland wondered if the District has license agreements to maintain any other areas, within the District. Mr. Pires will research this matter.

Mr. Curland asked if bond or CDD funds were used for the “park” areas. Mr. Cole stated, to his knowledge, no bond money was used for the parks. Mr. Brougham indicated that he was told that developer funds paid for all improvements to the parks, not bond funds.

C. Manager

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

Mr. Adams presented the Unaudited Financial Statements as of March 31, 2013. He noted that there were no unauthorized draws by the trustee.

Mr. Adams indicated that operating supplies, under Access Control, was at 160% and pointed out the offsetting revenue source for that expense, which is listed on Page 2, miscellaneous revenue.

ii. NEXT MEETING DATE: April 24, 2013 at 8:00 A.M.

The next meeting is scheduled for May 22, 2013 at 8:00 a.m.

D. Operations Manager

Regarding landscape renovation, Ms. Crismond advised that the landscape architect completed the plans and they should be received any day. Upon receipt, she will forward the plans to Mr. Albeit and transmit them to the contractors to revise their proposals, accordingly. Mr. Brougham asked that the plans not be given to the contractors until officially approved.

Ms. Crismond indicated that the landscape architect provided a list of tree replacement options, should the District decide to replace the ficus trees.

Mr. Fritz asked the status of the whitefly problem. Mr. Brougham stated that the problem is under control.

TWELFTH ORDER OF BUSINESS

**Audience
Requests**

Comments/Supervisors'


Mr. Wineberg reported a rumor that a new homeowner on Mahogany Bend has an agreement with Stock to install trees in front of the lift station in the area that the CDD recently replanted and fenced.


THIRTEENTH ORDER OF BUSINESS

Adjournment

There being nothing further to discuss, the meeting adjourned.

On MOTION by Mr. Peterson and seconded by Mr. Brougham, with all in favor, the meeting adjourned at 9:09.


Secretary/Assistant Secretary


Chair/Vice Chair