

**MINUTES OF MEETING  
FIDDLER'S CREEK COMMUNITY DEVELOPMENT DISTRICT #1**

Public Hearings and a Regular Meeting of the Board of Supervisors of the Fiddler's Creek Community Development District #1 were held on **Wednesday, August 28, 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 ( <i>via telephone</i> )	Assistant Secretary

**Also present were:**

Chuck Adams	District Manager
Cleo Crismond	Assistant Regional Manager
Terry Cole	District Engineer
Tony Pires	District Counsel
Aleida Martinez Molina ( <i>via telephone</i> )	Weiss Serota, Special Counsel
Mike Williams ( <i>via telephone</i> )	Akerman Senterfitt
Alice Carlson	AJC Associates, Inc.
Tony DiNardo	Developer
Ron Albeit	The Foundation
Joe Vacaro	Resident
Jesse Fritz	Resident
Richard Johnston	Resident
Larry Regnier	Resident
Kathleen Smith	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 Supervisors Brougham, Curland and Peterson were present, in person. Supervisor Slater was attending via telephone. Supervisor Bergmoser was not present.

**On MOTION by Mr. Brougham and seconded by Mr. Peterson, with all in favor, authorizing attendance, via telephone, by Supervisor Slater, due to extraordinary circumstances, was approved.**

- **Discussion: Recent Events Delaying the Issuance of the Series 2002 and 2005 Exchange Bonds**

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

Mr. Brougham asked that this item be moved to the beginning of the Agenda, as it is interrelated to the Second and Third Orders of Business.

**THE FOLLOWING SECTION WAS TRANSCRIBED  
VERBATIM, PER THE CHAIR'S REQUEST**

**Mr. Brougham:** Aleida, you were made copied on some emails yesterday, going back in time that related to the comfort letter, I'll term it that, regarding the delay of payments on the 2002 and 2005 bonds, from May of 2013 to May of 2014 due to the fact that we were anticipating the exchange transactions on those bonds to occur, were you not?

**Ms. Martinez Molina:** I was.

**Mr. Brougham:** And at that time, I believe the consensus between you and Mr. Batista was that a motion should not be made or any approach to the bankruptcy court because you had, there was sufficient agreement amongst all parties. Is that correct?

**Ms. Martinez Molina:** Correct.

**Mr. Brougham:** Okay, well we're now at a juncture here where, I'll defer to any comment from Mr. DiNardo, that, apparently, the anticipated exchange transactions for the 2002 and 2005 bonds are not going to go forward and the public hearing, that was to be held today, is going to be, and I'll defer to you, Mr. DiNardo, deferred or cancelled.

**Mr. DiNardo:** Deferred, I mean the issue is, is that U.S. Bank, the trustee, says this District owes them \$600,.....

**Mr. Pires:** \$431,000.

**Mr. DiNardo:** Oh, I'm sorry, I inverted something. \$431,000 so, you pay them, we could go forward.

**Mr. Brougham:** Correct, I understand that. You are not willing, as bondholder's agent, you're not willing to go forward with U.S. Bank as trustee for this exchange transaction?

**Mr. DiNardo:** No, no.

**Mr. Brougham:** So, we will, your preference, you are instructing the Board to defer or to continue the public hearing to a date to be...

**Mr. DiNardo:** Well, I'm instructing the Board, and I think, let me put it this way, at this moment, I'm not going to do any instructions to the Board. I think we, the bondholders, will put their position in writing to the Board and that that will come.

**Mr. Brougham:** Okay, and that's fine, that the CDDs are the, basically the legal entity responsible for the issuance of those bonds. We initiated, at the request of the bondholders and a presentation by Mr. Reagan, the exchange transactions to go forward, the Board, the District did not initiate those actions so, at this point, Tony, I will defer to you first, for any comments.

**Mr. Pires:** I think, when we get to the point of the public hearing, on the, that's been scheduled to consider Resolution, excuse me, the public hearing with regards to the, advertised for today, for the special assessment and imposition involving the exchange bonds. Unless there is some opposition, I guess, from the bondholders, I think, I would suggest that we would move to continue that hearing to a date and time certain. In discussions with Mr. Adams and Mr. Williams, we feel we, a continuances to the next board meeting, for one (1) month, would be sufficient, without having to do additional notice, to the property owners but, then, if we go beyond that point, we need to readvertise and send additional written notice to the property owners that are affected.

**Mr. DiNardo:** Can't you get everything done and just keep it in suspense until this issue, between the District and U.S. Bank, is resolved.

**Mr. Pires:** You mean hold the second public hearing and have the initial hearing today?

**Mr. DiNardo:** Yes, I mean the issue is between the District and U.S. Bank. U.S. Bank is saying this District owes them over \$400,000. I don't know if it was reflected on the financial statements.

**Mr. Adams:** I would defer to bond counsel on that, because that could take months. I would defer to bond counsel as to whether or not that would be appropriate to do that, at this point, not knowing when you would actually have the final public hearing on it.

**Mr. Brougham:** Mike Williams, what's your input on this?

**Mr. Williams:** Well, I could not hear everything that Tony DiNardo was saying or was being questioned.

**Mr. Brougham:** The question boils down to what the Board should consider doing with respect to the advertised public hearing concerning the exchange bond transactions. I don't want to put words in your mouth.

**Mr. DiNardo:** I am saying, Mike.

**Mr. Brougham:** Can you hear him? Can you hear Tony, Michael?

**Mr. Williams:** I can hear him better now.

**Mr. DiNardo:** I am saying, Mike, can everybody go forward with the process and just wait until the District resolves their issue with U.S. Bank.

**Mr. Williams:** Well, yes, I think, because of sort of messages I got, I don't think the Board or Chuck have any resolution or documents today but if you are suggesting that we proceed forward with a continued hearing, next month, that would actually be fine, I think, and wait until the matters get straightened out on the bond side, provided that the bond side straightens out in manner that the assessment process reflects.

**Mr. DiNardo:** Yea, I mean, the numbers don't change.

**Mr. Curland:** Can I ask a question? What has to happen in order to go forward, then.

**Mr. DiNardo:** This District....

**Mr. Curland:** I understand what you said but, I understand....

**Mr. DiNardo:** What you guys got to do, I don't know.

**Mr. Curland:** Well, what do we have to do?

**Mr. Brougham:** Well, that's what we're trying to get some clarification on.

**Mr. Curland:** Can this be solved in 30 days?

**Mr. Brougham:** Well, I don't know. I doubt it myself, personally.

**Mr. Curland:** I do too, I have a question for Tony, do you believe...

**Mr. Pires:** Tony Pires or....

**Mr. Curland:** Pires. Do you believe this can be resolved? I mean, I saw, you know we received the document related to what you want us to do. Is it reasonable to assume it will be resolved in 30 days?

**Mr. Pires:** I can't say one (1) way or another. I have no further response from Mr. Bloom on this issue. I think what we are indicating is that it is not resolved, as of today, and if

we go through the process of having the public hearing levying and imposing assessments, then that property has those assessments levied on them and then we have an assessment roll, the assessments would go off roll, I believe that's how we were going to do it.

**Mr. Adams:** That's correct.

**Mr. Pires:** The assessments will be delivered to those property owners and its... we don't have the exchange bonds in place, for which those assessments are intended to help fund, so it makes it a little awkward.

**Mr. Adams:** Well, what we would end up doing is, once we finalize that transaction, then we would amend those debt service fund budgets; bring them back to the Board and have them approve those, since it's an off roll assessment program, it is not time-sensitive to the property tax roll.

**Mr. DiNardo:** The issue is not doing the exchange bonds. The issue is U.S. Bank says this District and the residents of this District owes them over \$400,000.

**Mr. Pires:** I disagree that it says "the residents"; they said the District owes.

**Mr. DiNardo:** Well, this District; it eventually goes back to the residents or the landowners.

**Mr. Pires:** Well...

**Mr. DiNardo:** If it's due.

**Mr. Pires:** No, it, it, no, I don't believe that the trustee has, in my opinion right now, has the ability to require the District to levy assessments generally, outside the debt service assessments for the bonds, to pay those purported fees.

**Mr. DiNardo:** Did anyone see what those fees are?

**Mr. Pires:** No, no, I'm going back to your statement, Tony, that where you indicated that the property owners will be paying for this \$461,000 that is purportedly, allegedly owed, according to Mr. Bloom. That, I don't believe they have the ability to require the District to impose special assessments from maintenance....

**Mr. DiNardo:** Good point here, Tony but, if nothing gets done, what is the status of the District? Bonds are in default, this District somehow has to put a payable on its books, or not even get audited, not even get a qualified opinion, let alone an unqualified opinion. You have a creditor out there saying that this District owes them almost \$400,000; that is material in your financial statements.

**Mr. Pires:** Yes, but, what they are saying, though, is that the purported amount or lien on the monies in the trust estate of the various bond series; they are not asserting any other lien. I don't think they have a lien right against any other funds of the District. I understand what you are saying, Tony, and the question becomes, will it be resolved going back to... I don't know. I can't say one (1) way or another. Again, there's been no response from Mr. Bloom, which also is curious, as you note in his correspondence, he also tries to hold, tie in District #2, and the various bondholders of District #2....

**Mr. DiNardo:** That has nothing to do with it.

**Mr. Pires:** That's correct because, as we indicated have nothing to do with this District. In trying to do.....

**Mr. Brougham:** Well, and I asked, there are a lot of different opinions, obviously, and I have one, as well but I asked you, Mr. Pires and Mr. Williams to write a letter to the Board, which you did, outlining the position, or at least your opinion, as to whether "the District", in my words, its operating and maintenance, operating, is liable for any of these alleged monies due to debt service and your statement, I believe, in your letter, was no, that they cannot put a lien or anything of that sort against our operating funds.

**Mr. Pires:** Yes, correct. Once again, I did not go into the issue. If there was to be litigation, somehow U.S. Bank was to sue the District over these fees they claim we owe them, assuming they get a judgment, we would have another battle as to whether or not we even have any liability but that's way down the road, it's not a lien issue, that's whether or not they would even prevail and get a judgment.

**Mr. Brougham:** Well, what's curious to me, in this whole history here, is that, once again, this Board, this District is a pawn in other people's concerns and business here. We didn't go into default on the bond payments; the bondholders did and the developer didn't make the payments on the bond payments that he owed. We initiated foreclosure procedures as we were required, several years ago, against those lands and, subsequently, immediately after that, bankruptcy was declared and we proceeded through the bankruptcy and, according to the terms of the bankruptcy, the payments were deferred on 2002 and 2005 bonds for a year, at the consent of all parties, the bondholders, and so forth. At one (1) point, we were sued by U.S. Bank for, I forget all the details, subsequently, that was dismissed. We were requested, by Mr. Reagan and the developer and the bondholders to initiate exchange bond transaction proceedings, which we

initiated. Subsequent to that, we got this letter from Greenburg Traurig saying, very confusing letter, as I read it, saying that they were owed an additional, on top of the \$400,000 or \$500,000 in legal fees that were paid out of the bond funds, they are owed an additional amount of money and there is no substantiation of the amounts of money that they are alleging that are owed. Your position, and Mr. Williams' position, is that, in terms of its operating monies, without predicting the result of any lawsuits is not responsible for those alleged nonpayment of legal fees.

**Mr. Pires:** Well, even, once again, based upon, as you saw in my letter to Mr. Bloom, I dispute that anybody's a \_\_\_\_\_ to the \_\_\_\_\_, regardless of the source of the fund, number 1. Number 2, rereading his letter, he asserts that U.S. Bank has a lien right as to the monies and properties again, in the trust estate or from the various bond issues. Arguably, the exchange, whether or not the exchange transaction could occur or Wilmington be the successor trustee with that purported lien in place, I don't know if that gets us to where the bondholders want us to be. If the new, there's a successor trustee in those bond series is the transfer of all the documents, property and money subject to the asserted lien, as Mr. Bloom indicates. I think, once again we dispute the lien, and I don't know if the bondholders would acquiesce in that concept that they transfer to any successor trustee, have that lien go with it, as indicated in Mr. Bloom's letter. That's one (1) alternative that Mr. Bloom recommended or suggested and, again, we dispute that and I don't know if the exchange transaction could go through, with that purported lien in place and whether or not that would be an issue.

**Mr. Brougham:** Well, there's multiple, conflicting opinion on all of these matters, which leaves us at a loss as to what really needs to happen. My concern is that I am very concerned about any possibility, notwithstanding a lawsuit, that the residents of CDD #1 are liable for any legal fees incurred by the U.S. Bank, as trustee, that we didn't...we were asked to authorize and did not authorize. Those fees have not been proved to anyone, as of this point. Quite frankly, I don't think this Board would like to continue with U.S. Bank as trustee because of all of their aggressiveness, in the past but, on the other hand, we have no choice; we are not the decision maker here. We were willing to go forward with Wilmington Trust, that was going to be a good outcome for everyone, and then that got sidetracked because of these other issues. Wilmington Trust, as I understand it, is not willing to become successor trustee, on the newly refunded bonds; they want all or nothing. The bondholders are saying, essentially, they are not

going to go forward with the exchange bond transactions, with U.S. Bank, as trustee. Have I said anything that anyone would dispute? Perhaps Mr. DiNardo would but, Mike?

**Mr. Williams:** No, from the perspective of Wilmington and U.S. Bank, I agree with exactly what you just said; my understanding is the same as yours.

**Mr. Brougham:** And we've had the "black marks" on our financials and on our audit report for a year or two (2) again, through no action or inaction of this Board of Supervisors. We didn't start the issue, we've done what I consider to be everything we can do to facilitate resolution of this and, to me, it's a bondholder trustee issue.

**Mr. Pires:** I guess, only one (1) question, and could I get Aleida on the phone, whether or not there is a recommendation or discussion. Do we need to file the motion and highlight what was previously referenced or any further guidance on it or do we have any, does the District have any exposure from the reorganization plan and bankruptcy court confirmation.

**Mr. Brougham:** I asked you to be prepared for that question, Aleida, because, last year, it was deferred in anticipation of the exchange bond transactions. Now, if that does not happen, where does that leave us with respect to anything having to do with the bankruptcy court.

**Ms. Martinez Molina:** Well, with respect to the bankruptcy court, the Confirmation Order provides that the CDD is, if you will, nothing in the confirmation order prevents the CDD from doing what it has to do. The way the question, to me, was phrased, in an email, was, does the CDD have an obligation to bring something forward in bankruptcy court and the answer to the question is no, the CDD does not have an affirmative obligation to bring anything to anyone's attention in bankruptcy court; however, again, the bankruptcy court does not preclude the CDD from doing whatever it needs to do. It reserved jurisdiction, in a somewhat convoluted way, to address the issues between the CDD and the reorganized debtor but that is not what we have here. This is, from what I hear, a dispute between the District and U.S. Bank

**Mr. Brougham:** Mr. DiNardo?

**Mr. DiNardo:** Tony, is there any governmental body that the District can complain to about the conduct of U.S. Bank?

**Ms. Martinez Molina:** I cannot hear.

**Mr. Pires:** What I can do is I can talk to Rick Reyes, I guess. I think District #2 is something to OCC but I think OCC has.....

**Mr. DiNardo:** You guys are being blackmailed.



**Mr. Brougham:** Okay, wait a minute, whoa, whoa, whoa one (1) at a time here. I fully agree with that comment that we are being blackmailed by more than one (1) party. Aleida, Mr. DiNardo's question was, is there any governmental agency that we can file a complaint with regarding the conduct of U.S. Bank.

**Mr. DiNardo:** Not regarding the bankruptcy. The bankruptcy has nothing to do with that.

**Mr. Brougham:** No, no, no; U.S. Bank, I said.

**Mr. DiNardo:** Yes, yes.

**Mr. Brougham:** And your answer was?

**Mr. Pires:** Unintelligible comment.

**Ms. Martinez Molina:** I'm sorry, you are asking Aleida if there is a governmental agency that to which.....

**Mr. Brougham:** That was Mr. DiNardo's question.

**Ms. Martinez Molina:** Okay.

**Mr. Brougham:** And Mr. Pires' answer was?

**Mr. Pires:** Based upon prior discussions, at other Board meetings, pertaining to District #2, there have been discussions about filing claims against OCC, I guess.

**Mr. Adams:** Well, I'd specifically asked that question on the conference call that we had a couple of weeks ago and I remember Mr. Williams and, also, counsel for Wilmington Trust, indicating that they had no knowledge of any agency, that we would actually have to sue. Their recommendation was to actually sue.

**Unknown speaker:** Is what agency?

**Mr. Pires:** I think there's no harm in exploring that; you authorize the Staff to do that.

**Mr. DiNardo:** CDD #2 explored it and they made a complaint to the federal agency, through Mr. Reyes, but that complaint could not go anywhere because it was in litigation.

**Mr. Pires:** We have no litigation so possibly it could....

**Mr. DiNardo:** You have no litigation so, at a minimum, I would ask Mr. Reyes what federal agency he wrote the complaint to, I mean they might wake up and say this doesn't smell right. You guys have no litigation so, at a minimum, I would make a complaint to the federal banking agency.

**Mr. Pires:** What might be appropriate, Mr. Brougham, is that you authorize the Staff to communicate with Mr. Reyes and the Board authorizes him drafting a letter for the Chairman to sign to go to the appropriate regulatory agency concerning U.S. Bank's actions.

**Mr. Brougham:** I would like to make a motion to do two (2) things: 1) I would like to make a motion to continue the public hearing on the 2002 and 2005 Exchange Bonds.

**Mr. Pires:** I think it's more continue the public hearing on assessment what it...

**Mr. Brougham:** Well, whatever. You tell me what the right legal phrase is. I want to not hear the public hearing on that item today, I would like to hear it a month from today. Maybe we can get some more clarity. So, whatever the official motion is, I'll let you fill in the blanks here, in a second.

**Mr. Pires:** Okay.

**Mr. Brougham:** And, secondarily, authorize Staff to explore what agency or other legal options or appeals we have to make concerning the conduct of U.S. Bank and its attorneys, Greenburg Traurig.

**Mr. Curland:** Does this move us forward, at this time.

**Mr. Brougham:** I don't know.

Unintelligible comments by several speakers.

**Mr. Brougham:** There's three (3) or four (4) issues that are all intertwined here, none of which, which is frustrating to me, none of which are the result of actions or inactions on the part of this Board; it is craziness.

**Mr. DiNardo:** I think for them to write this Board a letter....

**Mr. Brougham:** Them?

**Mr. DiNardo:** Greenburg Traurig, Warren Bloom, to write this Board a letter and reference CDD #2, that's the attitude they've had from Day 1....

**Mr. Brougham:** I know, well, you don't have to convince this Board of that. I have no respect for Mr. Bloom. I have no respect for Greenburg Traurig. I have no respect for U.S. Bank but you are right, we are being held hostage, again, by all of these parties. I don't like, from any perspective, this Board to have to expend legal fees fighting with people on actions that we did not initiate but, it's boiling down to that, again.

**Mr. Slater:** Mr. Chairman, this is Bob Slater.

**Mr. Brougham:** Yes, Bob.

**Mr. Slater:** Aleida had made a mention that there was no reason to go to the bankruptcy judge for an affirmative, because there is no affirmative action that can be done but, as a defensive action, I think it's important that we go back to the judge, the bankruptcy judge, and state the same case that we would to any federal agency that we do find that it should go there.

**Mr. Brougham:** Aleida?

**Ms. Martinez Molina:** Yes, well, I mean, at this point, what we are talking about would be #1, does the bankruptcy court have jurisdiction to address, you know, an issue like this? The bankruptcy court has jurisdiction and the authority to enforce a plan so, to the extent that this concerns, yet, to the extent that this concerns something other than enforcement of a plan, the court may not have the authority to do so. So, I am a little bit concerned about whether or not the court has the power, the authority, jurisdiction, in other words, to address an issue like this.

**Mr. Brougham:** I would agree. I am not a lawyer, Aleida, but I would agree. And the bankruptcy order was pretty definitive; it was closed and is going forward. If the bonds, for whatever reason, continue to remain in default, my understanding is that, while we have the authority to start foreclosure proceedings again, that has to be at the direction of the bondholders of those bonds, which is.....

**Mr. DiNardo:** That ain't happening.

**Mr. Brougham:** I agree with you, that ain't happening because the bondholders are some of our most favorite people and they are not going to initiate foreclosure against themselves. But, with respect to all of these issues, and there are multiple issues; #1) we need some sort of an answer from Warren Bloom but I don't know as we should go after him for an answer, I mean, it rests in his court. #2) we need to sort out the issue or direction as to directing Staff to approach another governmental agency regarding the actions of U.S. Bank. Go ahead Tony.

**Mr. DiNardo:** I wouldn't do Warren Bloom, I'd do Greenburg. You guys had nothing to do with it. He writes you a letter and says District #2. I'd even say....

**Mr. Brougham:** Well, whoever it is, the Federal Trade Commission or whomever....

**Mr. Pires:** Once again, I will advise the Board when we've come that far.

**Mr. Brougham:** Well, when are we going to get that far?

**Mr. Pires:** I think we can do that right now, that.....

**Mr. Brougham:** I know, that's why I wanted to move that discussion up.

**Mr. Pires:** Correct, if the Board wants...on the first part but, with regards to the U.S. Bank issue, the Board would authorize....

**Mr. Brougham:** I will make a motion that we direct Staff to investigate and then draft a letter, for the Chairman's signature, to the appropriate governmental agency complaining about the conduct of Mr. Bloom, with Greenburg Traurig and U.S. Bank, as trustee for the 2002 and 2005 Series Bonds and their alleged monies owed, or however you want to phrase it. Is there a second?

**Mr. Curland:** Second.

**Mr. Brougham:** All in favor say aye.

**Mr. Brougham, Mr. Curland, Mr. Peterson and Mr. Slater:** Aye.

**On MOTION by Mr. Brougham and seconded by Mr. Curland, with all in favor, directing Staff to investigate and draft a letter, for the Chair's signature, to the appropriate governmental agency, complaining about the conduct of Mr. Bloom, with Greenburg Traurig, and U.S. Bank, as trustee for the 2002 and 2005 Series Bonds, and their alleged monies owed, was approved.**

**Mr. Brougham:** The next thing I think we need to do is to continue the public hearing.

**Mr. Pires:** Regarding the adoption of the assessment roll and imposition of special assessments to finance and secure certain public improvements of the Fiddler's Creek Community Development District #1, as described in the Assessment Methodology Report 2013 Exchange Area, prepared by Fishkind and Associates, accepted by the Board on July 24, 2013.

**Mr. Brougham:** To?

**Mr. Pires:** To the...

**Mr. Brougham:** To the September...

**Mr. Adams:** 24<sup>th</sup>.

**Mr. Brougham:** 24<sup>th</sup>.

**Mr. Pires:** At 8:00 a.m.

**Mr. Brougham:** 8:00 a.m., meeting.

**Mr. Adams:** 25<sup>th</sup>, on the 25<sup>th</sup>.

**Mr. Pires:** September 25, at 8:00 a.m.

**Mr. DiNardo:** Can I make a suggestion?

**Mr. Brougham:** In a second. Do I have a second?

**Mr. Curland:** I'll second that.

**Mr. Brougham:** Second Mr. Curland. Discussion?

**Mr. DiNardo:** Why don't you go for 60 days, instead of 30 days? Why don't you do it in October?

**Mr. Brougham:** You know, we'll do whatever keeps peace in the family, here.

**Mr. DiNardo:** I would go for 60 days. I mean 30 days is nothing, with holidays and everything.

**Mr. Pires:** Unintelligible comments.

**Mr. Adams:** And you are going to have to readvert.....

**Mr. Pires:** Mike, do you have any problem with that? I think that's fine.

**Mr. DiNardo:** I mean, let's go 60 days.

**Mr. Adams:** I thought I heard Mr. Williams say, the other day, anything beyond 30 days he had a concern with; he felt we might need to renote so, between you two (2).

**Mr. Pires:** If I had to double check with Mike to find out what it was if we had two (2) continuances.

**Mr. Williams:** That's my position, Chuck. I think we can continue for one (1) meeting but it makes me a little nervous, anything beyond that.

**Mr. Brougham:** Alright. And if we don't get any....

**Mr. DiNardo:** Who does that go to? The landowners only? That's easy, it's only....

**Mr. Brougham:** Moved and seconded and I will accept your questions but let's not have cross talk here, please.

**Mr. Peterson:** Moved and seconded.

**Mr. Brougham:** All in favor say...

**Mr. Pires:** Thirty days.

**Mr. Brougham:** Thirty days. All in favor say aye.

**Mr. Brougham, Mr. Curland, Mr. Peterson and Mr. Slater:** Aye.

**On MOTION by Mr. Brougham and seconded by Mr. Peterson, with all in favor, continuing the Public Hearing regarding the adoption of the assessment roll and imposition of special assessments to finance and secure certain public improvements of the Fiddler's Creek Community Development District #1, as described in the Assessment Methodology Report 2013 Exchange Area, prepared by Fishkind and Associates, accepted by the Board on July 24, 2013, to September 25, 2013 at 8:00 a.m., was approved.**

**Mr. Pires:** For clarification, is that 30 days from...

**Mr. Brougham:** From September 2...

**Mr. Adams:** September 25<sup>th</sup> at 8:00 a.m.

**Mr. Pires:** Twenty-eight days.

**Mr. Brougham:** And, if we get to that point and we don't have any more clarity, as far as I am concerned, we will just put the whole thing on hold and life goes on and we pursue whatever complaints we can pursue against Greenburg Traurig.

**Mr. Brougham:** Or against U.S. Bank or against both of them, which brings up another question I would like to throw out. When this exchange bond transaction was initiated, the Board concurred and went forward on the basis that it would not incur any legal fees or any other fees resulting from these transactions. If the exchange bond transactions do not go forward, are the bondholders going to step up to the plate to pay the legal fees.

**Mr. DiNardo:** Nope. This is...the issue here is not anything to do with the exchange. The issue here is between U.S. Bank and the District and U.S Bank is saying that this District owes them \$460,000. So...

**Mr. Brougham:** Well, then

**Mr. DiNardo:** The exchange would go more easy if U.S. Bank did...

**Mr. Brougham:** I understand that but why are we....

**Mr. DiNardo:** Because you want, because this Board owes the bondholders \$30 million.

**Mr. Brougham:** No, the bondholders owe. The bondholders do.

**Mr. DiNardo:** You got to clean up...

**Mr. Brougham:** Well then, how much money has been expended, so far, on these exchange transactions, for legal fees, Tony?

**Mr. Pires:** I was trying to look over but unfortunately my bookkeeper is not in. Not that great from my end. I do not know what Mr. Fishkind's expense was or who he....

**Mr. DiNardo:** I paid Fishkind.

**Mr. Brougham:** Thank you.

**Mr. Pires:** That would probably be the largest fee to date, quite frankly, Mr. Fishkind.

**Mr. Joe Vacaro, a resident:** I have a question, in the middle, Joe Vacaro, I'm a little confused on the \$450,....

**Mr. Brougham:** We all are, Joe.

**Mr. Vacaro:** Here's the question. Is U.S. Bank the bank that inappropriately took construction bond money from CDD #1 to use the bondholders to fund their legal fees during the bankruptcy?

**Mr. Brougham:** Yes, sir.

**Mr. Vacaro:** Okay, at that point, why didn't we join in the lawsuit against U.S. Bank to get our money back? I'm sure that, if we did, something like that this would have all gone away and can we file something like that now. I understand CDD #2 is in a lawsuit with them and I think it is going ahead pretty well.

**Mr. Brougham:** Unintelligible comment.

**Mr. Vacaro:** Why can't we jump on their coattails and proceed with this.

**Mr. Brougham:** The Board elected, a year or two (2) ago, not to initiate legal proceedings to recover those monies.

**Mr. DiNardo:** Let me ask Mr. Chuck (Adams)...

**Mr. Brougham:** Mr. DiNardo.

**Mr. DiNardo:** Has any more funds recently come out of any construction account on CDD #1.

**Mr. Adams:** They have. Over the month of July we had three (3) hits to the....

**Mr. Brougham:** CDD #1?

**Mr. Adams:** To CDD #1 trust estates. Cumulatively, they were about \$14,000 and there was a couple of revenue account, or reserve accounts, and the construction fund was hit for \$5,000 or \$6.....

**Mr. DiNardo:** That's in addition to the \$460,000 they are saying that this Board owes them.

**Mr. Adams:** Yes.

**Mr. Pires:** Once you \_\_\_\_\_ the clarification, the letter actually says the amounts remain unpaid....

**Mr. Brougham:** Correct.

**Mr. Pires:** It doesn't say that there is a lien on the property.

**Mr. Brougham:** Correct.

**Mr. Pires:** We are taking the position that the trustee's counsel indicated that we owe them the money, which we dispute.

**Mr. DiNardo:** That's the issue, right there.

**Mr. Vacaro:** Well, you know, that's why I'm just looking for the clarifications that maybe we should open up a suit now and go after them and put a little bit of, you know....

**Mr. DiNardo:** Pressure.

**Mr. Vacaro:** Pressure on them to \_\_\_\_\_.....

**Mr. Vacaro:** Yes, I mean, I understand that your decision, made a year or year-and-a-half ago, two (2) years ago, maybe you felt that that was the right thing to do and, you know, taking a nonpas...you know, a passive action on it but, now that they are putting fire on the CDD, I think now is the time to retaliate and.....

**Mr. Brougham:** Yes, yes and that's....

**Mr. Vacaro:** It seems that you spend a lot of legal fees.....

**Mr. Brougham:** Well, that's always on the table; always has been on the table and I think there's still some, the door is always open to file suit. You file suit and you know what happens; we start spending, not other people's money, we start spending more of our own money against...

**Mr. DiNardo:** *Unintelligible comment.*

**Mr. Vacaro:** But, aren't we going to be spending that money.....

**Mr. \_\_\_\_\_:** They just took another \$14,000, it just keeps on going.

**Mr. Brougham:** They are not taking money from our operating account, at this point. They are not taking money from our residents' O&M assessments.

**Mr. Adams:** No, they can't.

**Mr. Brougham:** Okay, it's coming from bond funds of one (1) type or another.



**Mr. Pires:** Mr. Chairman, what we may want to do, whenever we see that happen, have a standing instruction to the Manager to write U.S. Bank saying we dispute their ability to withdraw those funds and request reimbursement, just on the off chance that they don't make any waiver argument, in the future, that we acquiesced, to the taking of those funds. I think that will suffice on a continuing basis.

**Mr. Brougham:** I have no problem with that.

**Mr. Adams:** That's.....

**Mr. DiNardo:** Unintelligible comment. That construction fund to put infrastructure, that the District gets benefit and, based on that benefit, that's how the assessments are made and, as a matter of fact, these bondholders, not only took out of the construction account, they took out of the.....

**Mr. Pires:** Unintelligible comment.

**Mr. DiNardo:** And the trustee account.....

**Mr. Brougham:** Trustee, not the bondholders.

**Mr. DiNardo:** I mean trustee. The reserve account is monies that all the individuals get at the end of the project...

**Mr. Brougham:** Uh-huh.

**Mr. DiNardo:** So they took homeowners' monies too, so don't say they haven't taken homeowners' monies; they took homeowners' monies.

**Mr. Brougham:** Are we clear?

**Mr. Pires:** I guess, from the perspective of the direction to the Manager to write to U.S. Bank every time.....

**Mr. Brougham:** Yes, they should, I mean there is nothing

**Mr. Pires:** Nothing, and, one (1) other item....

**Mr. Brougham:** I'm not too worried about that.

**Mr. Pires:** To have Mr. Adams or I talk to Mr. Reyes about.....

**Mr. Brougham:** Yes, I had instructed you to do that anyway.

**Mr. Pires:** Additional conversations about what his thoughts might be with regards to.....If this Board decides to go ahead and initiate litigation.

**Mr. Brougham:** Joe.

**Mr. Vacaro:** I have a question. Unintelligible comment....the more I see this, the muddier it gets. My question is, and I'm assuming all the residents in CDD #1 do not have a clue, how long can U.S. Bank be in that position to just arbitrarily take cash out of an account. I mean....

**Mr. Brougham:** The money is sitting in their bank, right, and they just go and dip in anytime they want. They do not ask our approval. They have never asked our approval. They take the money but then it gets turned around that we are responsible for them taking the money. I don't quite understand that logic, when they take the money without authorization by anyone, on this Board or in this District, and then the District gets faulted for them taking the money. It is absolutely ludicrous to me.

**Unknown speaker:** But I think, from CDD #1, the members, if the residents knew that this was going on, it would be.....

**Mr. Brougham:** Well, this has been full transparency for a year-and-a-half or two (2) years.

**Unknown speaker:** I don't know about that.

**Mr. Brougham:** Well, maybe you don't know, pardon me, pardon me, these meetings are held once a month, they are advertised and all these matters have been discussed by this Board over the last two (2) or three (3) years. Mr. DiNardo.

**Mr. DiNardo:** This Board did not know \$14,000, it got taken out of the construction account, until I just mentioned it.

**Mr. Brougham:** I understand that.

**Mr. DiNardo:** And that's what the issue.....

**Mr. Brougham:** I understand that.

**Mr. DiNardo:** Is. That's what the issue that District #1 was suing.....

**Mr. Brougham:** District #2.

**Mr. DiNardo:** I mean District #2. They don't take any money out of District #2's construction account.

**Mr. Brougham:** I understand. Because they sued them. Alright, let me ask you...

**Mr. DiNardo:** Unintelligible comment....

**Mr. Brougham:** Let me ask you this question. Are you, as a developer of the bondholder, supporting the legal fees of CDD #2, in their suit?

**Mr. DiNardo:** No, I don't pay any legal fees.

**Mr. Brougham:** Okay. If CDD #1 filed suit against U.S. Bank, as trustee, would you support our legal fees?

**Mr. DiNardo:** No.

**Mr. Brougham:** Okay.

**Mr. DiNardo:** You are independent, you are an indep.....

**Mr. Brougham:** Thank you, thank you for your answer.

**Mr. Fritz:** Unintelligible comment.

**Mr. Brougham:** Where are we?

**Mr. Fritz:** The.....

**Mr. Brougham:** Thanks, Jesse. I am not even going to ask for "Developer's Report/Update", I've just gotten it. Is there anything hanging fire on, for Aleida or Mike Williams?

**Mr. Adams:** No sir.

**Mr. Brougham:** Mike, I would appreciate and Tony, I would appreciate a statement of your legal fees, to date, associated with the exchange bond transactions.

**Mr. Williams:** Unintelligible comment.

**Mr. Brougham:** Okay.

**Mr. Williams:** Okay, thank you all.

**Mr. Brougham:** And I definitely understood that we were not to be, we were not liable for any fees associated with this transaction and I think that's on the record, be that as it may.

**Mr. DiNardo:** Well, I will pay for the exchange, when the exchange happens but, if the exchange does not happen, I'm not paying for it. That's what we said, so I'm not paying for something that is not going to happen, because this Board does not want to do anything against U.S. Bank.

**Mr. Brougham:** No, well, I dispute that. We can argue all day about it. This Board is perfectly willing to go forward with the bond exchange transaction.

**Mr. DiNardo:** So is the bondholders and so is the developer.

**Mr. Brougham:** With the exception of U.S. Bank as trustee.

**Mr. DiNardo:** So they can take more money out.....?

**Mr. Brougham:** You, as the bondholders, Mr. DiNardo, have said you will not go forward, as long as U.S. Bank is trustee. This Board has not said that. You have.

**Mr. DiNardo:** Well, you want to know something?

**Mr. Brougham:** Yes.

**Mr. DiNardo:** This Board, you owe U.S. Bank \$460,000.....

**Mr. Brougham:** They're alleging that we do. Do you agree that we owe them some bill that we have never seen?

**Mr. DiNardo:** I have no idea.

**Mr. Brougham:** Well then why do you make that statement?

**Mr. DiNardo:** Because they made the statement. The Board is doing nothing to prevent that statement.

**Mr. Brougham:** This is all hearsay and I don't want to engage in it.

**Mr. DiNardo:** When you get a legal letter, that's not hearsay.

**Mr. Brougham:** Okay, that's fine. Thank you. It doesn't seem to me that those comments help out this District, at all.

**SUMMARY TRANSCRIPTION COMMENCED**

**SECOND ORDER OF BUSINESS**

**Special Counsel Update: Bankruptcy Proceedings**

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

**THIRD ORDER OF BUSINESS**

**Developer's Report/Update**

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

**FOURTH ORDER OF BUSINESS**

**Update: Series 2006 Bonds**

Mr. Adams indicated that the transaction closed and was funded a couple of weeks ago.

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

In response to Mr. Brougham's question, Mr. Adams clarified that the Series 2006 and 1999 bonds were refunded; the 1999 bonds were refunded a few months ago and the 2006 bond

refunding closed most recently. Mr. Adams advised that the proposed budget reflects both refundings.

Mr. Brougham asked if the refundings will result in savings for all CDD #1 residents. Mr. Adams stated that savings will be realized for the residents of those bond areas, which encompasses most residents.

Mr. Brougham pointed out that U.S. Bank is the trustee on the new bonds.

**FIFTH ORDER OF BUSINESS****Engineer's Report**

Regarding the lake bank erosion control, Mr. Cole reported that the geotubes have all been filled but, due to the high amount of rain, the contractor has not been able to spread the bags next to the golf course. This work is being coordinated with Mr. Jim Vagen. Mr. Cole indicated that the golf course is closed on Monday and Tuesday, through September, and he is hopeful that the rains will decrease enough for the work to be completed. He noted that the material was spread and grass was installed, in non-golf course areas, and will be completed this week.

Mr. Brougham asked if the work can be extended. Mr. Cole replied affirmatively, adding that it will be trickier with the golf course closure. Mr. Cole pointed out that water levels usually do not drop until October. Mr. Brougham asked if all of the geotubes are in place. Mr. Cole replied yes, in this phase. Mr. Brougham questioned when the contractor will be paid. Mr. Cole stated that the contractor will be paid but the District will hold retainage for the work that must be completed. Mr. Adams indicated that there were progress payments.

Regarding the traffic signal project, Mr. Cole indicated that work began. He is obtaining topographic information and is discussing the work progression with David Plummer and Associates, the traffic consultant who is designing the signal and coordinating the items needed for the topographic information. Mr. Cole is also coordinating with an underground utility locate company. The design efforts will continue.

Mr. Peterson asked when the light will be installed. Mr. Cole recalled stating, at the last meeting, that it will take about one (1) year to complete the entire project.

Mr. Pires asked if the District needs a letter from Collier County or FDOT confirming that they approved installation of the traffic signal. Mr. Brougham advised that the FDOT will provide a letter, if the District requests it; however, the FDOT email that the District received is

sufficient justification of their approval. Mr. Cole indicated that the email is sufficient justification that the warrants are met to proceed with the signal; the District must still go through the FDOT permitting process, as well as courtesy copying Collier County.

Mr. Pires questioned if FDOT typically issues a letter, as opposed to an email, indicating that the warrants were achieved and that the signal was appropriate and authorized. Mr. Cole indicated that he will follow up with FDOT. Mr. Brougham stated that he has no objection to obtaining the letter, other than FDOT indicating that they normally do not issue a letter. Mr. Pires recommended obtaining a letter. Mr. Brougham directed Mr. Cole to ask FDOT for a letter. Mr. Pires stressed that the letter should be from someone who has the authority to give authorization.

Mr. Cole presented Draw #81, for the 2005 Series bonds, for approximately \$2,400 for ongoing work related to the lake and roadway conveyances. Documents were prepared and Mr. Cole met with Mr. Pires and Mr. Mark Woodward. Additional information was provided for the lakes turnover and the matter is pending.

Mr. Brougham asked Mr. Cole to identify engineering expenses associated with the traffic signal, separately, for the purposes of accruing expenses. Mr. Cole indicated that engineering expenses will be billed through the general fund. Mr. Brougham asked Mr. Adams if Management is tracking expenses associated with the traffic signal. Mr. Adams replied affirmatively. Mr. Brougham questioned if the estimate remains \$350,000 to \$400,000. Mr. Cole recalled that the estimate was approximately \$350,000. It was noted that \$350,000 is the total estimated expense, not just CDD #1's portion.

Regarding the Waste Management (WM) punch list items, related to the resurfacing project, Mr. Cole advised that he must follow up with WM on those items, including minor cleanup and final striping. Mr. Brougham asked when striping will occur. Mr. Cole felt that it should be completed soon.

Mr. DiNardo stated, for the record, that the traffic light was in the construction funds. Mr. Brougham voiced his understanding. Mr. DiNardo explained that everyone must pay extra because the traffic light was in the construction funds that were taken. Mr. Brougham stressed that the Board understands that the traffic light was to be funded with construction funds, until U.S. Bank took \$4 to \$5 million from the construction account. Mr. Brougham pointed out that

the Engineer's Report was subsequently revised so that the traffic signal is no longer included. Mr. Brougham stated that the District would stop people from raiding the funds, if it could.

Regarding Mr. Brougham's comment about the District stopping people from raiding the funds, if it could, Mr. Vacaro questioned if the District could file a lawsuit against U.S. Bank for illegally taking the construction bond money. Mr. Brougham advised that the term "illegally" is up for debate. Mr. Brougham stated that filing a lawsuit was discussed and the Board decided, a year-and-a-half or two (2) years ago, not to pursue a lawsuit against U.S. Bank. Mr. Vacaro asked if money will be spent to answer U.S. Bank's blackmail letter, which indicates that the CDD owes them \$460,000. Mr. Brougham replied perhaps. Mr. Vacaro pointed out that the District will be spending money on that matter. Mr. Brougham advised that the District will spend legal funds, as authorized to date, for Mr. Pires to conduct an investigation of where the District can file a complaint about U.S. Bank's actions. Mr. Brougham added that the District has not initiated a lawsuit against them; everything is alleged.

Mr. Fritz asked if it would be logical to discuss this with CDD #2, as they are already involved in a lawsuit with U.S. Bank. Mr. Brougham indicated that two (2) Staff members attend the CDD #2 meetings each month and are kept up-to-date regarding the lawsuit. Mr. Pires recalled that the Board authorized Staff to have general discussions with Mr. Reyes, CDD #2's special counsel. Mr. Fritz asked Mr. Pires' opinion of CDD #2's position. Mr. Brougham stated "No comment".

Mr. DiNardo indicated that CDD #2 won an injunction against U.S. Bank from taking any funds from the construction account. U.S. Bank appealed the ruling and it will be heard by the appeals court this week. Mr. DiNardo reiterated that CDD #2 won an injunction and have an ongoing lawsuit. He noted that the bondholders are also suing U.S. Bank. Mr. DiNardo stressed U.S. Bank is no longer taking construction money from CDD #2's accounts.

Mr. Vacaro wondered if U.S. Bank would stop taking construction funds, if CDD #1 filed a lawsuit. Mr. Brougham indicated that he is stopping discussion on this matter. Mr. Brougham voiced his position that, in the past, the Board thoroughly discussed the matter, at the time, and the Board decided not to pursue legal action. In Mr. Brougham's opinion, CDD #2 is a completely different entity, in terms of its percentage of build out and construction money needs, than CDD #1, which was a primary consideration of the Board, in making its decision. Mr. Brougham stated that CDD #1 was within one (1) or two (2) areas fully built out; all of the

infrastructure was in place so there was less risk, in the Board's opinion, at that time, to pursue any legal action against U.S. Bank for taking bondholder construction money and remitting it to the bondholders or wherever it went. Mr. Brougham stated that it is history.

Mr. Vacaro noted that Marsh Cove is not built out. Mr. Brougham acknowledged that Marsh Cove is not built out and, to the extent that infrastructure must be built, it will be at the developer's expense. Mr. Vacaro noted U.S. Bank's letter to the District. Mr. Brougham advised that the District responded but U.S. Bank has yet to respond. Mr. Brougham explained that the District directed District Counsel to investigate what governmental agency the District can file a complaint with.

**SIXTH ORDER OF BUSINESS**

**Affidavits of Publication**

Mr. Adams presented the affidavits of publication for today's Public Hearing and Regular Meeting.

**SEVENTH ORDER OF BUSINESS**

**Public Hearing to Consider Resolution 2013-10, Adopting the Final Budget for Fiscal Year 2013/2014, Pursuant to Florida Law**

***\*\*\*Mr. Brougham opened the Public Hearing.\*\*\****

It was noted that a copy of Resolution 2013-10 was omitted from the agenda packages; however, the proposed budget was included.

Mr. Adams stated that Ms. Alice Carlson, of AJC Associates, Inc., is in attendance today to present changes to the lien roll.

Ms. Carlson indicated that residents own property in the areas covered by the recently refinanced bond series'. She advised that all assessments were reduced.

Ms. Carlson highlighted adjustments related to the original 1996 bonds, which were refinanced in 2006 and were recently refinanced again, becoming the 2013 bonds. She distributed spreadsheets detailing the lien roll adjustments and noted the neighborhoods, on Page 1. Ms. Carlson indicated that there were no replats or changes on this bond issue, as everything was platted years ago. She advised that four (4) Isla Del Sol units were sold. Ms. Carlson referred to the "Isla Del Sol 2" line item, which stated "no buydown", and explained that, when



the process began, the developer was making “buydown” payments on the closings; the developer was selling the property and making a buydown payment because they felt that the debt on the property was too high. The developer continued doing this for all of the bond series’ until after the bankruptcy, at which time, the decision was made to discontinue “buydown” payments, for certain neighborhoods. Ms. Carlson indicated that, after the refinancing, one (1) prepayment was received, in Whisper Trace. The schedule reflects assessment savings this year, of \$98 to \$927, over last year, depending on the neighborhood.

Ms. Carlson indicated that the 1999 bonds that were refinanced are now the 2013-1 bonds. She recalled that, last year, the process to replat Runaway Bay began but it was officially platted this year. Ms. Carlson advised that the Runaway Bay neighborhood was replatted from 49 to 98 lots. The developer sold 52 units to Lennar and, to date, Lennar had nine (9) closings. Ms. Carlson noted that this bond also includes the clubhouse and spa building. The schedule reflects assessment savings, this year, of \$172 to \$575, over last year, depending on the neighborhood. In response to Mr. Brougham’s comment, Ms. Carlson confirmed that the club and spa savings is \$17,350.

Mr. Brougham asked if there were any changes in ERUs. Ms. Carlson replied no; the only thing that would change is the net ERUs, due to prepayments.

No members of the public spoke.

**\*\*\*Mr. Brougham closed the Public Hearing.\*\*\***

Mr. Adams presented Resolution 2013-10 for the Board’s consideration. He explained that Resolution 2013-10 identifies that the District had a public hearing, today, which was appropriately noticed and advertised and that the budget that was prepared adequately addresses all of the District’s operating and debt service retirement expense needs.

**On MOTION by Mr. Brougham and seconded by Mr. Peterson, with all in favor, Resolution 2013-10, Adopting the Final Budget for Fiscal Year 2013/2014, Pursuant to Florida Law, was adopted.**

- **Consideration of Resolution 2013-11, Imposing Special Assessments and Certifying an Assessment Roll (to be provided by District Counsel)**

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

Mr. Adams presented Resolution 2013-11 for the Board's consideration. He explained that Resolution 2013-11 levies the assessments; it contains Exhibit A, which is the Fiscal Year 2014 budget, along with Exhibit B, which is the Lien Roll, prepared and discussed by Ms. Carlson. Mr. Adams stated that the resolution levies the assessments, in the amounts necessary to fund the adopted budget, certifies the roll, authorizes placement of the assessments on the property tax bill and, on the off-roll basis, a prorated schedule of billing off roll, on a monthly basis, during the course of the fiscal year.

Mr. Pires read Resolution 2013-11 into the record:

*"A Resolution of the Fiddler's Creek Community Development District #1, Imposing Special Assessments and Certifying an Assessment Roll, Providing a Severability Clause, and Providing an Effective Date"*

Mr. Pires advised that the assessment lien records will also include the maintenance assessments, as well as the debt service assessments, a portion of which Ms. Carlson provided.

**On MOTION by Mr. Curland and seconded by Mr. Peterson, with all in favor, Resolution 2013-11, Imposing Special Assessments and Certifying an Assessment Roll, was adopted.**

Mr. Brougham directed Mr. Adams to chastise his Staff regarding Resolutions 2013-10 and 2013-11 not being included in the Agenda package. Mr. Adams assured Mr. Brougham that he is not pleased and will speak to Staff; the documents are standard and identical to what the Board has seen in the past and should have been included. Mr. Brougham discussed continuing the meeting, since the documents were not available during today's meeting.

**EIGHTH ORDER OF BUSINESS**

**Discussion: Recent Events Delaying the Issuance of the Series 2002 and 2005 Exchange Bonds**

This item was previously discussed.

**NINTH ORDER OF BUSINESS**

**Discussion: Lakes Turnover**

Mr. Pires noted that revised documents were provided to him by Mr. Cole. He reviewed them and will schedule a meeting with Mr. Cole. Mr. Pires hopes to finalize this by the next meeting.

Mr. Brougham asked Mr. Pires if he believes this matter can be finalized. Mr. Pires replied affirmatively stating that the problem relates to some lakes being excavated beyond the lake bank tracts. Mr. Pires explained that those issues must be resolved, whether through additional easements or through another means.

**TENTH ORDER OF BUSINESS**

**Consideration of Traffic Signal Cost Sharing Interlocal Agreement with Fiddler's Creek CDD #2**

Mr. Brougham presented the Interlocal Agreement for the Board's consideration. He noted that the only change from the agreement authorized last month was that CDD #2 wished to reimburse its 50% of the cost after the traffic signal is installed.

It was noted that CDD #2 has 45 days, following completion, to pay their portion of the costs, meaning, CDD #1 will carry the full costs until the work is completed.

Mr. Curland pointed out that the agreement is for two (2) lights and asked if the proposed third ingress/egress off of Fiddler's Creek Parkway will never be opened. Mr. Cole advised that, currently, there are no plans to pursue it. Mr. Curland asked what is planned for that area. Mr. DiNardo indicated that, temporarily, landscaping will be installed; the developer has not made a final decision.

Should a light be needed at Championship Drive and 951, Mr. Curland asked who will be responsible for installing it. Mr. Adams indicated that the area has multiple property owners. Mr. Pires advised that part of the obligation of the District or developer, for the payment of installation of the signal at 951 and Fiddler's Creek Parkway. The county's position comes from the PUD document, which is the zoning document for Fiddler's Creek. Mr. Pires questioned if the Board wants him to investigate whether it says anything about Championship Drive, although he does not believe it was intended to be a signalized intersection. Mr. Brougham stated that there is nothing in the District's PUD that obligates the District in any way to Championship Drive.

Mr. Curland asked if this means that no other traffic light agreements will need to be put in place, as a result of this agreement. Mr. Brougham replied, as a result of this, absolutely not; there are two (2) lights, end of story, there is no open end.

**On MOTION by Mr. Peterson and seconded by Mr. Brougham, with all in favor, the Traffic Signal Cost Sharing Interlocal Agreement with Fiddler’s Creek CDD #2, was approved.**

**ELEVENTH ORDER OF BUSINESS**

**Discussion: Public Participation Protocol  
(to be provided under separate cover)**

Mr. Pires indicated that the legislature adopted new laws related to public participation at meetings, effective October 1, 2013. He stated that the District already has a document in place which outlines procedures at meetings. The Rules of Procedure, in a general manner, articulate when the District has a meeting and a quorum. The Board, by resolution, in 2007, also adopted and reaffirmed, the “Protocol and Meeting Procedures”. Mr. Pires stated that a minor addition is necessary to clarify the “Citizen’s Right to be Heard”, regarding various items, topics, time limitations and how those can be controlled; otherwise, the current procedures achieves about 95% of the new requirements.

Mr. Pires felt that the “Rules of Procedure” do not need to be amended; rather, he suggested adopting a resolution that amends the “Protocol and Meeting Procedures”; a draft will be included in the next agenda.

Mr. Brougham felt that it is important to facilitate questions from the public at the time an item is discussed rather than restricting public comments to the end of the meeting. He stated that he tries to entertain audience questions, as a topic is being discussed.

Mr. Pires indicated that he worked with Mr. Adams and suggested that the agenda packages contain a brief outline of the “Protocol and Meeting Procedures” for speakers, so that the public knows what to do, if they wish to speak during a meeting.

**TWELFTH ORDER OF BUSINESS**

**Approval of July 24, 2013 Regular Meeting Minutes**

Mr. Brougham presented the July 24, 2013 Regular Meeting Minutes and asked for any additions, deletions or corrections. The following changes were made:

Line 161: Change “#2” to “#1”

**On MOTION by Mr. Peterson and seconded by Mr. Brougham, with all in favor, the July 24, 2013 Regular Meeting Minutes, as amended, were approved.**

**THIRTEENTH ORDER OF BUSINESS                      Other Business**

Mr. Brougham recalled the discussion, earlier in the meeting, regarding U.S. Bank's actions, and voiced his preference to expend legal fees to investigate what governmental agency the District can file a complaint with, against U.S. Bank, as opposed to incurring legal fees to join CDD #2's lawsuit or initiate a lawsuit. Mr. Brougham asked each Board Member to comment.

Mr. Slater acknowledged that CDD #2 was granted an injunction against U.S. Bank; however, he prefers to remain low-key, having Mr. Pires locate federal agencies that the District can complain to regarding U.S. Bank. He does not want to join CDD #2 now but his opinion might change if CDD #2's injunction holds.

Mr. Adams indicated that CDD #2 approached the Comptroller of the Currency Administration of National Banks, which appears to be the agency that CDD #1 would file its complaint with. Mr. Pires advised that he will research it.

Mr. Brougham reminded everyone that this is a Board discussion, only.

Mr. Curland recalled that, several years ago, the Board decided not to become involved in a lawsuit against the trustee or their attorneys, by virtue of the fact that the District has less at stake, as CDD #1 was virtually built out. The Board wanted to see what would happen with CDD #2. Mr. Curland advised that there is nothing in CDD #2's lawsuit and injunction that gets them their lost money; it strictly stops future withdrawal of their funds. He stated, if CDD #2 is successful in recouping their lost funds, he will then suggest that CDD #1 reconsider. Mr. Curland voiced his opinion that, at the current time, it does not make sense for CDD #1 to move forward on anything other than trying to get the bond refinancing completed.

Mr. Peterson felt that Mr. Bloom's response to Mr. Pires' response was indicative of how this proceeds forward and whether U.S. Bank is truly looking for \$460,000 or if it is a delay tactic. He feels that the Board does not need to do anything until they see a response to Mr. Pires' subsequent letter to Mr. Bloom.

Mr. Brougham felt that a number of factors remain, that are not well-defined. He hopes that Staff can boil this down to substantive, factual statements that the Board can rely upon.

**FOURTEENTH ORDER OF BUSINESS****Staff Reports****A. Attorney**

Mr. Pires indicated that the oral argument on CDD #2's injunction is September 4, 2013. Mr. Brougham directed Mr. Pires to email instructions to the Board regarding how to "live stream" the hearing.

**B. Manager****i. Unaudited Financial Statements as of July 31, 2013**

Mr. Brougham presented the Unaudited Financial Statements as of July 31, 2013.

Mr. Adams highlighted that the trustee hit three (3) accounts for a total of \$14,835, as reflected, on Page 2, under "Legal bankruptcy". The flow of those funds is shown on Page 6. Mr. Adams stated that \$4,695 came from the 2005 Series bonds debt service fund. On Page 5, \$7,952 came from the 2002 Series bonds reserve account and \$2,188 was taken from the 2005 Series bonds construction fund.

Mr. Peterson asked if the trustee is obligated to define what the money was taken for. Mr. Adams indicated that Management requested detailed invoices, numerous times, for both Districts. Mr. Adams advised that the trustee indicated that their invoices include detailed information that is privileged during ongoing litigation; therefore, the District only receives statements with general descriptions of who is receiving the funds but with no explanation of the services related to the costs.

Mr. Brougham asked Mr. Adams if he will follow up, as previously discussed. Mr. Adams confirmed that he will send follow-up letters, as previously discussed. Mr. Pires stressed that this is important because the District's position is that U.S. Bank is not authorized to take the funds, in addition to their failure to provide details of the expenses. Mr. Pires felt that the trust indenture states that the trustee is to ask the Board whether it will pay those fees.

**ii. Fiscal Year 2014 Proposed Meeting Schedule**

Mr. Brougham presented the Fiscal Year 2014 Proposed Meeting Schedule for the Board's consideration.

Mr. Adams indicated that the schedule is similar to previous years, with the exception of the December meeting, which is typically moved to a week before Christmas. In the proposed schedule, it was moved to the second week in December.

**On MOTION by Mr. Brougham and seconded by Mr. Peterson, the Fiscal Year 2014 Proposed Meeting Schedule, as presented, and directing Staff to advertise, accordingly, was approved.**

**iii. NEXT MEETING DATE: September 25, 2013 at 8:00 A.M.**

The next meeting is scheduled for September 25, 2013 at 8:00 a.m.

**C. Operations Manager**

Ms. Crismond reported that the landscape renovation project commenced and is scheduled to be completed this Friday. Tree trimming is underway and will be completed the end of September, weather permitting. Ms. Crismond stated that approximately \$120,000 was spent on tree trimming.

Mr. Brougham asked when the District's landscape contract is up for renewal. Ms. Crismond indicated that the contract expires in December, 2014. Mr. Brougham noted that he complained twice to Ms. Crismond, who passed those complaints along to TruGreen, regarding their deficiencies in blowing leaf debris off the roadways and sidewalks, on a regular basis; in Mr. Brougham's opinion, TruGreen is very negligent in keeping up with that work. Mr. Brougham stated that there are leaves on sidewalks and he does not believe that they blow the leaves every day. Mr. Brougham feels the same about leaves along the roadways. Mr. Brougham advised that Ms. Crismond put TruGreen on notice and, if the problems do not improve, the District will file a "Notice of Deficiency" with them.

**FIFTEENTH ORDER OF BUSINESS**

**Audience  
Requests**

**Comments/Supervisors'**

Ms. Jesse Fritz, a resident, commented that the trees along Fiddler's Creek Parkway, which are in front of Montreux Lane, seem to have whitefly issues; leaves fall off the trees and TruGreen always seems to be behind on removing the leaves. Mr. Brougham asked if those are ficus trees. Ms. Crismond replied affirmatively. Mr. Brougham asked if whitefly are causing the leaves to drop or if it is an annual cycle. Ms. Crismond confirmed that whitefly was previously causing a lot of leaf dropping; however, she has not seen whitefly activity recently, as the area is being sprayed. Mr. Fritz indicated that the problem is starting again. Mr. Brougham directed Ms. Crismond to have TruGreen review the ficus along the berm between Mulberry Lane and Peppertree Way, as the trees have a lot of leaf loss.

Mr. Fritz reported that there is an 18" to 20" hole in front and to the left of the Montreux Monument.

Mr. Richard Johnston, a resident, noted difficulty hearing certain speakers, with the exception of Mr. Brougham, who is on the microphone.

Mr. Slater stated that those participating via telephone are difficult to hear; a microphone for the audience is needed. He pointed out that certain voices do not carry.

Mr. Larry Regnier, a resident, noted that the Championship gate is unmanned and the number of commercial and business vehicle use of the gate has increased. Mr. Brougham clarified that those vehicles are free to use that gate to exit the community. Mr. Regnier stated that traffic is backing up and residents are being delayed ten (10) to 15 minutes, at times. Mr. Regnier advised that, sometimes, other residents will use their remote control to open the gate for those vehicles; however, he feels that adds to the danger and lack of security within the community. Mr. Regnier stated that the community has a commercial entrance and voiced his opinion that commercial and business vehicles should use the Sandpiper Drive entrance and exit; Championship gate should be reserved for residents.

Mr. Brougham advised that small commercial vehicles can enter at the Sandpiper Drive or Main gates; large semi trucks, box trucks, etc., are permitted to enter at the Sandpiper Drive gate, only. He added that all vehicles can exit through any gate or the gate closest to where they are. Mr. Brougham recalled that the Board previously discussed restricting commercial and business vehicles from exiting at a single location but decided against it, due to the complexities of the gate pass system and the cost.



Noting that he brought this subject to the Board, Mr. Curland disagreed with Mr. Brougham's statement, noting that the cost issue was not considered when the Board outvoted him on this matter. Mr. Brougham stated that he stands corrected. Mr. Curland indicated that it was voted down by the remaining Board Members. Mr. Brougham voiced his opinion that the District cannot legislate against people's ineptness with the passes; the Board's view, at the time, was to restrict entrance to the Sandpiper Drive gate but to allow everyone to exit, as expeditiously as possible.

Mr. Regnier questioned how to change the Board's policy on this matter. Mr. Brougham indicated that the Board must initiate a motion and vote in favor, after investigating the costs related to doing this. Mr. Brougham voiced his opinion that restricting exiting will neither increase or decrease security within the community. Mr. Brougham reiterated that there is no way to control people. Mr. Regnier felt that if vendors are told which gate to use, they should use them. Mr. Brougham disagreed, stating that the vendors can be directed but will still do whatever they want to do.

Mr. Curland suggested that the Board direct the District Manager to investigate, through the security contractor, and obtain a proposal of what is necessary to limit ingress and egress, at the Championship gate, to residents only, or better control of the Championship gate from the Main gate. Mr. Curland stated that he wants to know the options available to improve the situation.

Mr. DiNardo voiced his opinion that what Mr. Curland proposes is illegal. Mr. Brougham agreed.

Mr. Curland clarified that he wants the District to investigate options for better access and egress from the Championship gate.

Mr. DiNardo asked Mr. Pires if the District can restrict any access to the roads. He stated that construction will use one (1) exit because the developer made it a condition to the builders; otherwise, he does not know of any other restrictions that the District can make.

Mr. Brougham stated that the District can control but not restrict ingress and egress.

Noting health, safety or welfare considerations, Mr. Pires stated that, in general, the roads are accessible to the public, as a whole; however, the District can explore whether it has flexibility. He stated that the Board could find that certain gates are more amenable to certain types of vehicles, etc., which may give the District the ability to restrict certain gates.

Mr. Adams asked Mr. Curland if he wants to restrict or simply wants to know if there is alternative technology to improve ingress and egress at the Championship gate. Mr. Curland stated that he wants to investigate technology to improve ingress and egress.

**On MOTION by Mr. Curland and seconded by Mr. Slater with Mr. Curland, Mr. Slater and Mr. Peterson in favor and Mr. Brougham dissenting, directing the District Manager to investigate, through the security contractor, options to improve ingress and egress, at the Championship gate, was approved. (Motion passed 3-1)**

Mr. Brougham voiced his opinion, as the Chair, that this is a waste of time, as the District will never be able to legislate it.

Ms. Kathleen Smith, a resident, stated that FPL visited her home last week and noted that MapQuest still instructs FPL to use the Championship gate. She noted that this created a backup and asked who controls this.

Mr. Adams indicated that the District has no control over how MapQuest, Google, etc., direct people.

Mr. Fritz suggested asking community residents to volunteer to man the Championship gate.

Ms. Smith agreed that, during the season, the Championship gate should have supervision.

Mr. Brougham stated that he is tired of talking about this security and “security in name only”. He voiced his opinion that it is ridiculous that the Board spends time on this type of stuff, when anybody with any kind of initiative can enter the community at any time, via bicycle, foot or whatever. Mr. Brougham feels that the Board spends so much time trying to “beat a dead horse”; people are going to be people, that is the bottom line.

Mr. Curland asked the status of the continuing services agreement for security services. Mr. Brougham stated that he and Mr. Albeit are still working on the draft. Mr. Brougham believes that they are close to an agreement and presenting it to the Boards for their input. Mr. Albeit indicated that they are still reviewing it. Mr. Brougham noted that he recommended some changes from the initial draft. Mr. Brougham advised that, if agreement of all parties can be reached, the agreement can go into place, at any time; in the interim, the District renewed its

contract with The Foundation, under the previous terms and conditions, as approved at the last meeting.

**SIXTEENTH ORDER OF BUSINESS**

**Adjournment**

There being nothing further to discuss, the meeting adjourned.

**On MOTION by Mr. Slater and seconded by Mr. Brougham,  
with all in favor, the meeting adjourned at approximately 9:45  
a.m.**

  
Secretary/Assistant Secretary

  
Chair/Vice Chair