

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

A Special Meeting of the Board of Supervisors of the Fiddler's Creek Community Development District #1 was held on **Friday, October 18, 2013, at 9:00 a.m.**, at the **Fiddler's Creek Club and Spa, 3470 Club Center Boulevard, Naples, Florida 34114.**

**Present at the meeting were:**

Phil Brougham	Chair
Gerald Bergmoser	Vice Chair
Richard Peterson	Assistant Secretary
Robert Slater ( <i>via telephone</i> )	Assistant Secretary

**Also present were:**

Chuck Adams	District Manager
Cleo Crismond	Assistant Regional Manager
Tony Pires	District Counsel
Rick Reyes	Tobin & Reyes, P.A., Litigation Counsel
Tony DiNardo	Developer
Elliot Miller	CDD #2 Board Member
Charles Turner	Resident

**FIRST ORDER OF BUSINESS**

**Call to Order/Roll Call**

Mr. Adams called the meeting to order at 9:00 a.m., and noted, for the record, that Supervisors Brougham, Bergmoser and Peterson were present, in person. Supervisor Slater was attending via telephone. Supervisor Curland was not present.

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

**SECOND ORDER OF BUSINESS**

**Public Comments**

Mr. Brougham asked for public comments.

There being no public comments, the next item followed.

**THIRD ORDER OF BUSINESS**

**Discussion: Participation in Global Settlement Meeting with the Trustee and Trustee's Counsel**

Mr. Brougham introduced Mr. Rick Reyes, of Tobin & Reyes, P.A., Fiddler's Creek CDD #2's Litigation Counsel. He indicated that Mr. Reyes will speak regarding a potential global settlement with U.S. Bank, trustee for the District's bonds.

Mr. Brougham asked Mr. Pires to provide guidelines for the discussion.

Mr. Pires indicated that he and Mr. Reyes will inform the Board if the discussion is treading near a subject that they do not wish to discuss in a public meeting. He noted that the statute requires "pending litigation" in order to hold a closed door session; at the present time, it would be difficult to assert that the District has pending litigation with U.S. Bank. Mr. Pires advised that the Board might need to give the Chair and Mr. Reyes great latitude to participate in the settlement discussions.

Mr. Brougham stated that the global settlement meeting is scheduled for October 22, 2013. He indicated that he had discussions with Mr. Elliot Miller, of CDD #2, regarding the potential for CDD #1 to join CDD #2, in the global settlement. He explained that CDD #1 had significant difficulties with U.S. Bank, including blocking the District from removing U.S. Bank as the trustee, effectively blocking an exchange bond transaction, which could have cleared the District of its financial situation. Furthermore, over the years, U.S. Bank has withdrawn significant funds from the District's bond accounts, some of which were used for early redemption but some of which U.S. Bank used to pay their own legal fees. Mr. Brougham noted that the District incurred significant expense from its general fund for legal fees related to the U.S. Bank matters.

Mr. Reyes indicated that his firm represents Fiddler's Creek CDD #2 in their claims against U.S. Bank. He believes that CDD #1 has similar claims. Mr. Reyes stated that CDD #2 brought an action against the trustee, U.S. Bank, along with certain entities that were or are majority owners of certain bond series, for converting funds from the construction accounts, under CDD #2, and using those funds to pay legal fees incurred on behalf of U.S. Bank and the bondholders to oppose the developer's reorganization. He noted that the same appears to have happened with CDD #1's construction account funds; a total of \$652,000 was removed from construction accounts to pay associated legal fees between June, 2010, and July, 2012.

Mr. Reyes pointed out that \$1.3 million in unauthorized expenses were removed by the trustee, presumably for their legal expenses, of which, \$652,000 is from the 2005 Series bond construction account. The remainder was taken from the 2002 remedial, reserve and revenue accounts. He believes that CDD #1 could pursue the same type of claim, as it appears that the court concurs that the funds should only have been used for construction. The CDD #2 case also involved construction draws that U.S. Bank refused to fund, which the court ordered them to fund. CDD #2 will be going to court soon for a ruling that the misuse of funds is a breach of the trust indenture. Mr. Reyes reiterated his belief that CDD #1 can make the same claims.

Mr. Reyes indicated that the trustee is arguing that it should also have a lien over CDD #1's trust estate for any liability that it might incur with respect to CDD #2; U.S. Bank is attempting to collateralize its potential liability to CDD #2 with CDD #1's trust estate. He pointed out that U.S. Bank is also refusing to cooperate in the District's transfer to Wilmington Trust, unless CDD #1 agrees to allow its trust estate to be encumbered in that fashion.

Mr. Reyes referred to the memorandum prepared by Mr. Pires detailing the District's goals, if it proceeds with litigation. Mr. Reyes noted that the District advanced \$397,000 of its own funds to pay for construction related expenses that could not be funded from the construction account. Mr. Adams clarified that the construction related amount is approximately \$100,000; the \$397,000 is related to legal expenses for Weiss, Serota. Mr. Reyes believes that the District can sue for the \$652,000 that was removed from the construction accounts, as those funds are only to be used for construction.

Mr. Brougham recalled that CDD #1 has observed CDD #2's lawsuits and their progress. CDD #1 previously took the position that the District would remain passive and reconsider whether to join in if it appears that CDD #2 will be successful. Mr. Brougham asked if CDD #1 can participate in the upcoming settlement hearing.

Mr. Reyes advised that, when the trustee asked for the meeting and asked the lawyer for the majority bondholders, it was understood that both CDDs #2 and #1 would be invited; they anticipate that Mr. Pires and a CDD #1 Board Member will be present.

Mr. Pires indicated that the Board is asked to consider retaining Tobin & Reyes, P.A., as Special Litigation Counsel, to represent the District in this settlement conference, as well as to prepare any and all necessary pleadings for litigation against U.S. Bank, in the event that the matter is not resolved. The Board must also authorize Mr. Pires, Mr. Reyes, Mr. Adams and the Chair to participate in those discussions.

Mr. Brougham stated that he discussed, with Mr. Reyes, the potential of this and entering into a settlement meeting; the District needs some clout regarding what it will do if they do not reach a settlement. He indicated that this is why Mr. Pires recommends that the Board authorize the formulation of a complaint, if it does not settle.

Mr. Brougham asked Mr. Reyes to estimate his fees to represent the District at the settlement meeting. Mr. Reyes felt that the fees should not exceed \$5,000, between now and the settlement meeting on Tuesday. Mr. Reyes pointed out that the legal fees would be significantly more if a lawsuit is necessary.

Mr. Slater asked why the District would not prepare the documents necessary to sue now, so they are available at the settlement meeting, as opposed to waiting until after the meeting to prepare them. Mr. Reyes stated that the District has the benefit of the trustee knowing him and what he has done, on behalf of CDD #2; it is not a bad idea to have the documents prepared but it is probably not necessary because the trustee's lawyers already know what the claims will be, based on the lawsuits brought by CDD #2.

Mr. Brougham asked if Mr. Reyes has sufficient time. Mr. Reyes stated that he would like to have an executive session to discuss his ideas regarding how the District should present its claims; however, an executive session is not possible at the present time.

Mr. Reyes explained that there are two (2) pending matters; CDD #2 sued the trustee and, when they terminated the trustee, instead of leaving, the trustee sued CDD #2 to remain as trustee. He stated that there are counterclaims in the case brought by the majority bondholders, against the trustee.

In response to Mr. Peterson's question, Mr. Pires reiterated his opinion that the District cannot hold an executive session until litigation is pending. Mr. Peterson asked what event must occur in order for the District to hold an executive session. Mr. Pires indicated that the easiest action would be filing a lawsuit; currently, there is no "threat" of a lawsuit against the District. Mr. Peterson felt that there is a large information gap.

Mr. Brougham stated that the settlement meeting was scheduled and U.S. Bank invited both CDDs #1 and #2 to participate in the meeting. He indicated that, if CDD #1 engages Mr. Reyes, he can and will accompany the District at the meeting, with an initial list of the District's settlement demands. Mr. Brougham explained that, with their history with Mr. Reyes, U.S. Bank should know that there will likely be litigation, from CDD #1, if a settlement is not reached. He

would like to be comfortable in the Board authorizing the filing of a lawsuit and holding an executive session, prior to the settlement meeting; however, the timing does not facilitate that.

Mr. Peterson asked Mr. Reyes if he believes that CDD #1's interests will be appropriately represented at the settlement meeting or whether a follow-up meeting will be necessary. Mr. Reyes believes that CDD #1's interests will be appropriately represented; however, there could be follow-up meetings, as it is not uncommon for a complicated matter to take more than one (1) day to resolve. Mr. Reyes reiterated that U.S. Bank knows CDD #2's issues and that CDD #1 has similar issues. Mr. Peterson asked if the amount of money in question is similar for both CDDs. Mr. Reyes indicated that approximately \$1.3 million was taken from CDD #1; however, about \$3.2 million was taken from CDD #2.

Mr. Brougham suggested that, subject to the Board's approval, the District should attend the settlement meeting, on October 22, 2013, with the implied threat that, if U.S. Bank does not negotiate fairly, CDD #1 will most likely file a lawsuit. He noted that the Board should know the potential outcome when it meets on October 23, 2013, at which the Board can take further action, if necessary.

Mr. Peterson referred to Mr. Pires' email letter, from October 15, 2013, which identifies several issues, and asked if the District will be represented with respect to all of those issues. Mr. Brougham replied affirmatively. Mr. Reyes voiced his understanding that the items in Mr. Pires' memo are things that the District wants to ask for; the concept of U.S. Bank interfering with the transfer to Wilmington Trust is an issue on which the District would sue U.S. Bank.

Mr. Bergmoser asked Mr. Reyes to comment on the probability of success at the settlement meeting. Mr. Reyes could not comment, as he does not know U.S. Bank's intent; U.S. Bank called the meeting after the appellate court ruled in CDD #2's favor. In response to a question, Mr. Reyes confirmed that the settlement meeting is before a mediator.

Mr. Reyes indicated that the bondholders request for a receiver is in the future, meaning that the court would appoint a receiver to control the accounts so that the depletion of funds ceases. He noted that this is an issue for U.S. Bank because, until now, they had an unlimited supply of money to pay their litigation costs; U.S. Bank has not used any of their own funds to pay their litigation expenses. If a receiver is appointed, U.S. Bank would be forced to apply to the court for fees; they would have to use their own funds or their attorneys would have to wait to be paid.

Mr. Bergmoser asked if filing an injunction against U.S. Bank to prevent them from taking more money would be sufficient to trigger an executive session. Mr. Pires reiterated that the trigger is "pending litigation"; in his opinion, any litigation that is filed would qualify. Mr. Pires clarified that filing a lawsuit requesting an injunction would qualify. Mr. Reyes indicated that intervening in the pending litigation may qualify.

In response to Mr. Slater's question, Mr. Reyes clarified that the bondholders asked for a receiver and CDD #2 joined them in the request because neither is in favor of the trust money being used for this purpose.

Mr. Miller indicated that he cannot comment regarding whether the CDD #2 Board would approve of an intervention; prior to CDD #1 considering that, as an alternative to bringing its own lawsuit, Mr. Miller advised that he must think about the impact it would have on CDD #2's lawsuit. Mr. Miller stated that CDD #2 also has a pending Motion for Summary Judgment.

Regarding what U.S. Bank might expect, Mr. Miller indicated that CDD #2 already had one (1) settlement conference with them. He stated that they walked away from the settlement conference with a Memorandum of Understanding. The settlement conference was truly global, as it also included ITG and Oppenheimer. Mr. Miller feels that the upcoming settlement conference is not global, as ITG and Oppenheimer are not included. He recalled that the result of the last settlement conference was that ITG's counsel indicated that ITG would not approve the settlement unless CDD #2 prevailed on the developer to drop its independent Naples Lending litigation against ITG. He pointed out that CDD #2 had no ability or interest in that case. Mr. Miller summarized that ITG was trying to hold the settlement hostage, to settle the other case with the developer, for which CDD #2 was not involved in. Mr. Miller advised that, due to that and other reasons, the settlement evaporated. He confirmed that U.S. bank knew and still knows exactly what CDD #2 wants. Mr. Miller noted that, since that settlement conference, CDD #2's demands have changed because they must get indemnified for any costs that it bears in indemnifying Wilmington Trust. He feels that U.S. Bank knows what is coming and nothing should be a surprise to them; ITG is not a part of the meeting.

Mr. Charles Turner, a resident, asked what happens to the \$461,000 fee that U.S. Bank put upon CDD #1 and questioned if it is a bona fide bill that must be addressed. Mr. Brougham indicated that it is part of what the District is disputing; the District believes it is a bogus claim. In response to a question, Mr. Adams confirmed that the money taken by U.S. Bank was used to pay their legal expenses. Mr. Adams clarified that U.S. Bank claims that they drew down to the

point where there were no additional funds to draw upon and incurred an additional \$461,000 above what they took from the trust estate. Mr. Adams indicated that U.S. Bank took money from CDD #1's 2002 and 2005 Series reserves, revenue and construction accounts; they also drew upon remedial accounts on two (2) of the trust estates.

Mr. DiNardo advised that, when added, U.S. Bank took \$5 million in fees fighting a bankruptcy; while all other attorneys involved in the case had to get their fees approved by the bankruptcy court; U.S. Bank's attorneys withdrew their fees, from the District's accounts, without going before the bankruptcy court for approval. He explained that U.S. Bank's legal fees were used to sue CDDs #1 and #2. Mr. DiNardo stated that U.S. Bank is now holding up the bond exchange.

Mr. Turner asked if the District has a plan or contingency in the event the District's attempt to recover the funds fails. He questioned the potential liability on property owners.

Mr. Reyes does not know all of the additional work to be completed. Mr. Brougham indicated that CDD #1 already funded legal expenses from its operating and maintenance (O&M) fund for legal fees associated with the bankruptcy and corresponding lawsuits; CDD #1 is seeking to recover those spent funds.

Mr. Turner stressed that, for him and the community, understanding what the Board is up against helps them be more comfortable that the Board is doing its best, as the community's representative. Mr. Brougham voiced his understanding and advised that the Board will keep the community informed, to the extent that it can, in a public meeting; what cannot be addressed publicly will be discussed in an executive session and the public will be privy to decisions made subsequent to the executive session.

**On MOTION by Mr. Peterson and seconded by Mr. Bergmoser, with all in favor, authorizing the retention of Tobin & Reyes, P.A., as Special Litigation Counsel, and authorizing preparation of a complaint/lawsuit against U.S. Bank, authorizing the Chairman, Special Litigation Counsel, District Counsel and the District Manager, as appropriate and necessary, to participate in settlement discussions with U.S. Bank and negotiate with U.S. Bank as to the above, with the goal to present a favorable negotiated settlement agreement to District #1, was approved.**

In response to Mr. DiNardo's question, Mr. Reyes confirmed that, once Mr. Adams signs off on the fee agreement, he will notify U.S. Bank that he represents CDD #1.

Mr. Brougham indicated that the outcome of the settlement meeting will be an agenda item on the October 23, 2013 agenda. Mr. Reyes explained that he will report what he can; under mediation rules, the settlement conference discussions are confidential. Mr. Reyes stated that he cannot disseminate the various positions from the mediation, except in a subsequent executive session. Mr. Peterson pointed out that the Board cannot hold an executive session unless the District files suit and asked how the Board can find out the information. Mr. Pires voiced his understanding. Mr. Reyes clarified that he can report the outcome to the Board. Mr. Peterson indicated that he wants more knowledge so he can properly represent. Mr. Pires advised that Mr. Reyes could converse with Mr. Peterson individually but cautioned against "daisy chaining" the information.

**FOURTH ORDER OF BUSINESS**

**NEXT MEETING: October 23, 2013 at 8:00 A.M.**

The next meeting is scheduled for October 23, 2013 at 8:00 a.m.

**FIFTH ORDER OF BUSINESS**

**Supervisors' Requests**

There being no Supervisors' requests, the next item followed.

**SIXTH 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 9:40 a.m.**




FIDDLER'S CREEK  
COMMUNITY DEVELOPMENT  
DISTRICT #1

REGULAR MEETING  
AGENDA

November 20, 2013

INVESTMENTS  
\* CUSTODIAL RISK | CONCENTRATION OF RISK

  
Secretary/Assistant Secretary

  
Chair/Vice Chair