

**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, October 23, 2013**, at **8:00 a.m.**, at the **Fiddler’s Creek Club and Spa, 3470 Club Center Boulevard, Naples, Florida 34114.**

Present at the meeting were:

Phil Brougham	Chair
Gerald Bergmoser	Vice Chair
James Curland	Assistant Secretary
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
Tony DiNardo	Developer
Ron Albeit	The Foundation
Joe Vacaro	Resident
Jim Schutt	Resident
Dave Yates	Resident

FIRST ORDER OF BUSINESS

Call to Order/Roll Call

Mr. Adams called the meeting to order at 8:00 a.m., and noted, for the record, that all Supervisors were present, in person.

SECOND ORDER OF BUSINESS

Public Comments: Agenda Items (5 minutes per speaker)

Mr. Brougham asked for public comments on agenda items.

There being no public comments on agenda items, the next item followed.

THIRD ORDER OF BUSINESS

Public Comments: Non-Agenda Items (5 minutes per speaker)

Mr. Brougham asked for public comments on non-agenda items.

Mr. Pires recommended reminding the public, at the beginning of each meeting, that, if they wish to speak on an agenda or non-agenda item, they should complete a “Speaker Information Sheet” and give it to the District Manager.

There being no public comments on non-agenda items, the next item followed.

FOURTH ORDER OF BUSINESS

Special Counsel Update: Bankruptcy Proceedings

There being no report, the next item followed.

FIFTH ORDER OF BUSINESS

Developer’s Report/Update

Mr. DiNardo reported that a party is interested in Marsh Cove.

Mr. Peterson voiced his concern about the condition of Fiddler’s Creek Parkway and the use of the road by heavy trucks and asked if Fiddler’s Creek Parkway is the responsibility of both Districts. Mr. Adams replied affirmatively. Mr. Peterson asked if the Districts have reserve funds for road repairs. Mr. Adams replied no. Mr. Peterson asked if there is other access to the Runaway Bay property. Mr. DiNardo replied no and reminded Mr. Peterson that these are public roads and the District cannot stop the trucks from using them. Mr. Peterson voiced his understanding; he is simply wondering if there is another access point for construction vehicles. Mr. DiNardo stated no.

SIXTH ORDER OF BUSINESS

Engineer’s Report

Mr. Brougham reported to Mr. Cole that oil was spilled recently, during road restriping. Mr. Cole advised that he will investigate it.

Mr. Cole indicated that herbicide material was discovered near Fiddler’s Creek, in the Marsh Cove area. He investigated the situation and a contractor was engaged to clean up the dumped chemicals. The herbicide material and contaminate soil were placed in five (5) drums and are awaiting pickup by a waste disposal facility; a chain of custody, documenting proper disposal of the materials, will be provided. In response to Mr. Brougham’s question, Mr. Cole

confirmed that the levels were within levels that do not require "self reporting". Mr. Cole clarified that there is no way to know who left the material.

Mr. Pires will send a letter to each contractor, working on site, advising of the situation and reminding them to follow proper procedures.

Regarding the traffic signal, Mr. Cole reported that the surveying was completed and forwarded to David Plummer and Associates. He expects the plans to be completed within the next six (6) to eight (8) weeks.

Mr. Joe Vacaro, a resident, asked if a final cost estimate was received. Based on similar intersections and recent signal construction, Mr. Cole estimated \$350,000. Mr. Brougham pointed out that the true cost will not be known until it goes out to bid. Mr. Vacaro asked if the budget contains a line item with a not-to-exceed amount. Mr. Brougham replied no.

SEVENTH ORDER OF BUSINESS**Continued Discussion/Update: Global Settlement**

Mr. Pires indicated that he, Mr. Brougham and Mr. Reyes participated in a settlement conference yesterday, with bondholders, U.S. Bank and Mr. Miller, of CDD #2. He reported that there was no resolution of the matter and Mr. Reyes was authorized to proceed, accordingly, to represent the interests of the District.

Recalling his comments from Friday's meeting, Mr. Pires reiterated that he and Mr. Reyes prefer to discuss legal strategy in an executive session, which can only occur when or if there is pending litigation.

In response to a question, Mr. Pires indicated that a request for an executive session must be made during a public meeting. He noted that, should it be necessary, the District could call a special meeting solely for the purpose of requesting the executive session.

Mr. Brougham reminded the Board that Board Members can contact Mr. Reyes, individually, to discuss the matter.

In response to a question, Mr. Pires reiterated what constitutes pending litigation and when an executive session can be requested. Mr. Brougham indicated that, once he can, he will contact Mr. Adams to schedule a special meeting, at which Mr. Reyes can call for an executive session.

Mr. Bergmoser asked if another settlement meeting is anticipated. Mr. Pires voiced his understanding that no follow-up meetings have been scheduled, to date.

EIGHTH ORDER OF BUSINESS

Discussion: Lakes Turnover

Mr. Pires noted that received documents from Mr. Cole. He is reviewing them and will have them for the next meeting.

Mr. Brougham voiced his frustration, stating that the Board has been hearing that for nearly a year; he wants it completed.

Mr. Pires indicated that some lakes have issues; it can be completed in stages but they wanted to complete everything at once. Mr. Brougham said "No, let's get it done". Mr. Cole stated that they have everything for all of the lakes, except Hawks Nest. Mr. Brougham indicated, if only one (1) or two (2) lakes are holding things up, the District should turn over the ones that can be done now and finish the others later. Mr. Pires confirmed that, at the next meeting, he will have a resolution and packet of materials to accept the conveyances for the tracts that the District is comfortable with turning over.

Mr. Cole recalled that the geotube repairs were delayed, due to high water; water is now dropping and he is coordinating with the golf course to complete the lakes over a four (4)-day period. He anticipates completing the work within the next few weeks.

Mr. Brougham asked about the other lakes, such as the other half of Mallards. Mr. Cole indicated that those will be completed shortly; however, the water is still high. In response to Mr. Brougham's question, Mr. Cole confirmed that all of the geotube was installed, as scheduled, for this phase.

NINTH ORDER OF BUSINESS

**Consideration of Resolution 2014-1,
Establishing Minimum Procedures for
Public Comment at Public Meetings**

Mr. Pires presented resolution 2014-1 for the Board's consideration.

Noting the five (5) minutes per speaker provision, Mr. Slater asked where it came from and if it is required by statute. Mr. Pires replied no. Mr. Slater felt that the time could be cut to one (1) minute or a more realistic amount, as five (5) minutes could cause meetings to last a very long time. Mr. Pires stated that a one (1) minute time limit could be construed as unreasonable.

Mr. Slater stressed his belief that one (1) minute is enough; he does not like a lot of the things in the procedures and asked where it came from. Mr. Pires began to explain the legislative changes. Mr. Slater stated that he read the legislative information and did not find anything like what is in the proposed procedures. Mr. Pires indicated that parts of it are from the legislation but the time frames are similar to those of other similar governmental bodies. Mr. Pires reiterated his opinion that one (1) minute would not be construed to be reasonable opportunity to provide an opinion. Mr. Slater asked if two (2) minutes is enough. Mr. Pires advised that three (3) minutes is the standard.

Mr. Slater asked why "Public Comments" appears twice at the beginning of the agenda; once for "agenda" items and again for "non-agenda" items. Mr. Pires indicated that it is to provide "general" public comment time, giving people the opportunity to speak. Mr. Slater questioned why there is not a single agenda item where they can speak on both. Mr. Pires voiced his belief that the District should provide the general public comment opportunity to items not on the agenda. Mr. Slater asked why speakers cannot speak to agenda and/or non-agenda items at the same time. Mr. Slater questioned what is on the speaker sheet that speakers must sign. Mr. Adams indicated that it requests the speaker's name, address, email, telephone number. Mr. Slater contended that the proposed procedure does not specify the information that will be asked, so it must be added to the procedures. Mr. Slater stated that he is from New Hampshire where the motto is "Live Free, or Die"; he feels that this is a "bunch of crap". Mr. Pires suggested attaching a form of the speaker sheet and addressing this item at the next meeting. Mr. Adams noted that three (3) minutes is the standard speaking time and suggested adding a statement regarding no redundant comments. Mr. Pires believed that the ability is already within the meeting protocol procedures; the Chair can control it.

Mr. Brougham summarized that the resolution will be revised to indicate three (3)-minute speaker time limits, the speaker sheet will be attached, along with a provision regarding no redundant comments.

In response to a question, Mr. Adams indicated that a speaker would have one (1) opportunity to speak on each item that they sign up for.

Mr. Slater recommended that the speaker sheet be revised to include a designation regarding whether it relates to an agenda or non-agenda item. In response to a question, Mr. Adams confirmed that the speaker sheet should be completed prior to speaking.

Mr. Brougham stated that, as long as he is Chair, he will give anyone every opportunity to speak, regardless of the provisions in the resolution, until such time as he feels discussion is out of order or redundant. Mr. Adams indicated that Mr. Brougham's process is fairly typical.

In response to Mr. DiNardo's question, Mr. Adams clarified that, while an agenda item is being discussed, the Chair will ask for public comments and the speaker sheets for that item. Mr. Brougham pointed out that, if this is the procedure, the agenda must be revised so that Item 2, "Public Comments: Agenda Items" does not appear, as it contradicts what Mr. Adams just said. Mr. Brougham asked if the Board is obligated to follow the form of agenda presented today. Mr. Adams replied no, the Board must only make sure that they give the public an opportunity to speak. Mr. Pires indicated that the agenda protocol could be that speakers must submit the speaker sheet to the District Manager prior to an agenda item coming up. Mr. Brougham reiterated that, although that is the official procedure, he will still allow anyone to speak on an agenda item, regardless of whether they completed a speaker sheet. Mr. Slater questioned why the speaker sheet is needed, if Mr. Brougham will allow those without it to speak. Mr. Pires advised that statute requires the District to have speaker sheets.

TENTH ORDER OF BUSINESS

Consideration of Proposal from TEM Systems Inc., to Improve Ingress/Egress at Championship Gate

Mr. Brougham presented the proposal from TEM Systems Inc. (TEM), to improve ingress and egress at Championship Gate and indicated that the proposal is to install a sensor that will sense when a vehicle is stuck. Mr. Adams explained that the sensor will send a signal to the gatehouse so that the guards can call and assist the vehicle. Mr. Slater asked what is gained by this system. Mr. Adams indicated that it should shorten the lines that were discussed at the August meeting. Mr. Slater questioned why the District needs to control egress. Mr. Adams noted that the system was designed to reconcile who entered and exited the property, each day. Mr. Slater voiced his opinion that each exit should have a single gate that opens automatically. Mr. Brougham advised that the CDDs invested in the software to track ingress and egress and it is being used by The Foundation.

Mr. Jim Schutt, a resident, stated that the system only works if someone runs the reports every day, which he does not believe is being done. He noted that he asked the guard about it

several months ago and he professed ignorance of it, which seems to indicate that it is not being checked.

Mr. Brougham concurred that the guard likely does not know about the report; he believes that the report is generated by the security office. Mr. Albeit indicated that he checks the report on a weekly basis. In response to Mr. Brougham's question, Mr. Albeit confirmed that the report is checked nightly.

Mr. Curland questioned why the District needs backup control over egress, when it has a roving patrol that can see who is still on site. He noted that this is a construction issue and the best way to check is through a physical check. Mr. Slater pointed out that a gate on Championship was lost last week because two (2) roofing trucks tried to exit at the same time; one (1) made it through and the other broke the gate. He stressed that the District does not have a secure community, *per se*, it has roving patrol who can check construction sites. Mr. Slater questioned again why the District needs to control egress.

Mr. Brougham stated that it is necessary because both CDDs voted and agreed to have this type of system and software; he feels that the District should use the system that it invested in.

Mr. Dave Yates, a resident, noted that people enter the community to walk their dogs and when he questioned Mr. Brougham about installing a gate, Mr. Brougham indicated that the District cannot install a gate because of public access. Mr. Brougham stated that the District can control access but cannot restrict it. Mr. Yates voiced his agreement with not controlling egress.

Mr. Curland motioned to not restrict egress from the community by virtue of having the egress gates, at all three (3) egress points, be automatic opening, by sensing traffic. Mr. Brougham stated that the motion dies due to lack of a second.

Regarding the TEM proposal, a question was raised about the 50% deposit requirement. Mr. Adams clarified that a deposit is not required; TEM will be paid upon completion. Mr. Brougham clarified that, if approved by both CDDs, CDD #1 will be responsible for its prorata portion. Mr. Pires pointed out that the proposal was valid for 30 days, which expired. Mr. Adams indicated that TEM will honor the proposal.

Mr. Bergmoser voiced his opinion that this only addresses part of the problem, as impatient drivers exit though the ingress lane when another vehicle is taking too long. Mr. Adams suggested that the new system might alleviate some of the issue. Mr. Bergmoser

recommended addressing all of the problems at once, rather than a piecemeal solution, such as installing sensors for both ingress and egress. Mr. Brougham suggested installing the sensor for egress and, if it works, the Board can consider installing ingress sensors.

On MOTION by Mr. Brougham and seconded by Mr. Slater, with Mr. Brougham, Mr. Slater, Mr. Peterson and Mr. Curland in favor and Mr. Bergmoser dissenting, the TEM Systems Inc., proposal to improve ingress/egress at Championship Gate, was approved.

ELEVENTH ORDER OF BUSINESS

Status Update: Public Hearing Regarding Adoption of the Assessment Roll and Imposition of Special Assessments to Finance and Secure Certain Public Improvements

Mr. Pires indicated that this item is regarding the status of the exchange bond and, given the current situation, it can be removed from the agenda.

TWELFTH ORDER OF BUSINESS

Approval of August 28, 2013 Public Hearings and Regular Meeting Minutes

Mr. Brougham presented the August 28, 2013 Public Hearings and Regular Meeting Minutes and asked for any additions, deletions or corrections. The following changes were made:

Line 97: Change “_____” to “initial”

Regarding the blanks, on Line 206, Mr. Pires indicated that he cannot recall his comments; he requested the audio but has not listened to it yet.

Line 348: Change “_____” to “will advise”

Line 434: Mr. Pires was unsure he would make the statement listed and asked to strike the entire line of the verbatim transcription.

Line 494: As Mr. Vacaro could not recall his entire comment, Mr. Brougham directed that the entire line be struck from the verbatim transcription.

Line 508: Change “_____” to “DiNardo”

Line 857: Change “civilized” to “signalized”

Line 935: Change "hearing" to "oral argument"

On MOTION by Mr. Bergmoser and seconded by Mr. Slater, with all in favor, the August 28, 2013 Public Hearings and Regular Meeting Minutes, as amended, were approved.

THIRTEENTH ORDER OF BUSINESS Other Business

Mr. Pires asked the status of finalizing the punch list items with Waste Management (WM) on the road resurfacing work. Mr. Cole indicated that he will drive the community to investigate and email Mr. Brougham, Mr. Adams and others, regarding the status.

FOURTEENTH ORDER OF BUSINESS Staff Reports

A. Attorney

Mr. Pires had nothing additional to report.

B. Manager

i. Approval of Unaudited Financial Statements as of September 30, 2013

Mr. Brougham presented the Unaudited Financial Statements as of September 30, 2013.

Mr. Adams indicated that revenues exceeded budget, expenditures were under budget and there were no additional unauthorized hits to the trust accounts.

Mr. Brougham referred to the \$397,000, under "ASSETS", "Due from other funds", and asked if it should continue to be shown as a receivable. Mr. Adams indicated that it is the Board's decision. Mr. Brougham stated that it represents the legal fees that the District paid from its "general fund". Mr. Pires suggested obtaining an opinion from Mr. Reyes, regarding this.

Mr. Bergmoser recalled the question about whether the District has reserve funds for repaving and asked if it is unusual or improper for a CDD to have reserves for capital improvements. Mr. Pires indicated that Boards have different philosophies. Mr. Adams advised that, typically, large scale projects, such as repaving roads, are generally dealt with at the time of need, through financing. Mr. Adams explained that the thought is that, by the time those projects are needed, prior debt service will be rolling off or terming out and the District can then finance infrastructure rejuvenation, essentially passing along the costs to the residents who will benefit

from it, rather than the current residents paying for the future work. Mr. Pires further explained this approach. Mr. Adams noted that certain smaller projects are built into the budget.

Mr. Peterson voiced his opinion that the term financing at the "time of need" does not strike true to him because the roads are deteriorating now. He noted that "time of need" is funding for the future and asked if the District should consider it.

Mr. Adams explained that part of the debt service amount that residents currently pay covers the initial installation of the road; if residents pay debt service and are also required to pay into a reserve, they will be paying for the initial installation, along with replacement, which might occur long after the resident no longer lives in the community. Mr. Adams questioned why the District would want to do it that way when it has the opportunity to address the replacement, at the time of need, based upon real costs, and with the residents of the time, who are benefitting from the replacement or refurbishment, to pay for it.

Mr. Peterson asked that debate of this matter be included as a future agenda item.

Mr. DiNardo pointed out that a future Board could choose to use a reserve, created by this Board, for whatever it wants.

Mr. Peterson reiterated that he wants this as a discussion item at a future meeting. Mr. Adams asked if Mr. Peterson wishes to raise it at a future meeting and ask for it to be on the following agenda. Mr. Peterson confirmed that he will raise the matter. Mr. Brougham indicated that, at the time the matter is discussed, the Board expects Mr. Adams to give a presentation of the alternatives, using "real life" examples, the demographics of the District, estimated costs to repave the road, in its entirety, etc. Mr. Adams was unsure if he could put real estimates to the cost of the future work. Mr. Brougham indicated that Mr. Cole will assist Mr. Adams in developing "good" estimates. In response to a question, Mr. Adams pointed out that it will cost millions to repave all of the roads. Mr. Adams asked Mr. Peterson to at least give him a meeting's notice prior to the meeting at which he wants to discuss the further.

Mr. Brougham indicated that the District's fund balance contains \$600,000 to \$700,000 of spendable money.

ii. NEXT MEETING DATE: November 20, 2013 at 8:00 A.M.

The next meeting is scheduled for November 20, 2013 at 8:00 a.m.

Mr. Brougham recalled discussions, at previous meetings, regarding a continuous service contract for security services. He stated that he worked with Mr. Albeit and Mr. DiNardo to

draft a contract; however, it became apparent that a continuous service contract would not alleviate the Board debating and approving the rate and contract, on a yearly basis. Mr. Brougham advised that, for this reason, he dropped pursuit of a continuous service contract as, in his opinion, there did not appear to be an advantage over the current process.

C. Operations Manager

Ms. Crismond recalled that, about one (1) year ago, defective work notices were sent to TruGreen, regarding white fly. She reported that TruGreen has fallen down in addressing the problem, as there was another outbreak. In Ms. Crismond's opinion, another outbreak should have never occurred. Ms. Crismond stated that, according to TruGreen, the chemicals could not soak in due to the amount of rain. She believes that TruGreen is using a "Band-aid" approach to the problem; they are spraying monthly but not pursuing a more intensive, long-term solution, such as systemic injections. Ms. Crismond stated that "they" caused damage to the ficus trees and hedges and she is "over it". She recommended hiring the contractor that previously reviewed the community and gave written opinion. The new contractor would treat all ficus trees and hedges, provide a one (1)-year warranty and visit twice per month; the cost for this service would be deducted from TruGreen's contract. Ms. Crismond advised that, currently, two (2) to three (3) months is being held from TruGreen.

Mr. Curland asked if the new contractor's treatment is different from what TruGreen is already doing. Ms. Crismond stated that it uses different ingredients. Mr. Curland asked if Ms. Crismond has verified the application of the new contractor's treatments at other sites. Ms. Crismond indicated that she has not verified it. Mr. Curland asked if the District is being asked to make this decision based on the new contractor's recommendation. Ms. Crismond stated that it is not just on the contractor's recommendations; she researched it on websites and various sources of information. Ms. Crismond reiterated her opinion that TruGreen is only using a "Band-aid" approach; TruGreen has not done something that would last long-term and, if they did, it was not effective.

A Board Member asked if the new contractor's guarantee means that, if it does not work, they will replace all of the ficus trees and hedges. Ms. Crismond indicated that they are guaranteeing it.

Mr. Brougham stressed that he wants clarity on the guarantee. He noted that, on the surface, it seems like something the District should do because it is the recommended process

and TruGreen's topical process was ineffective. Mr. Brougham questioned what time period the District will allow the new contractor to prove that their treatment approach works and, if it does not work and the trees need to be replaced, who pays for replacement; the new contractor, TruGreen or the District. He asked if the District must pay the entire \$45,000 up front or if the contract calls for progress payments, based upon effectiveness. Mr. Brougham was concerned about spending \$45,000 and still having a bad result.

Mr. Slater indicated that several villages utilized the systemic injection method and he believes that it is working. Mr. Vacaro advised that the method seems to have worked in other villages. Discussion ensued regarding the types of chemicals that TruGreen used. Ms. Crismond noted that whitefly eventually becomes immune to the chemicals; the chemicals must constantly be changed and it is the contractor's responsibility to change and use different formulas.

Mr. Brougham agreed that the District has questions but waiting another month to decide means delaying treatment.

Mr. Curland voiced his feeling that the "guarantee" is very loose. Mr. Adams believes that the guarantee is related to whitefly; if a tree dies for another reason, they might not pay. Mr. Curland questioned who determines what caused the tree to die. Mr. Adams indicated that tissue samples would be tested.

Mr. Brougham stressed that he does not want to pay the full \$45,000 up front; he prefers to pay half and pay the other half, once there is validation that the treatment worked. Mr. Adams suggested paying 50% after the treatment and the other 50% following a 90-day review. Mr. Curland asked for a definitive explanation of the guarantee. Mr. Adams voiced his opinion that the warranty will be for the eradication or control of whitefly; they will not be held to replacement, unless it can be proven that the tree died due to whitefly and their poor treatment. Mr. Curland recalled that the trees do not die from white fly infestation, during the first year; they die during the second year of infestation. Ms. Crismond could not verify; she must research it. Ms. Crismond confirmed that the District already has some weak ficus trees; they are not dead but they are very weak from the whitefly infestations. Mr. Brougham asked Ms. Crismond what the estimate was to remove mature ficus trees. Mr. Adams recalled an estimate of \$2,000 to \$3,000 to remove a tree and grind the stump.

Mr. Brougham directed Ms. Crismond to proceed but to provide more details, at the next meeting, regarding the new contractor's "guarantee". Mr. Curland asked if the work will

commence now. Mr. Brougham replied affirmatively; Ms. Crismond is to proceed with the new contractor, paying 50% after the treatment and the remaining 50% after 90 days.

Ms. Crismond reported that the landscape renovation project was completed.

Ms. Crismond indicated that the District received a letter from the Architectural Design Review Committee (ADRC) expressing concerns about the ficus tree trimming and white fly. Management contacted JRL Design (JRL) regarding the ficus tree pruning methods. She explained that pruning is completed in phases, on a three (3)-year cycle. Ms. Crismond stated that the ficus tree trimming was completed and The Foundation notified the District of their belief that the ficus trees are not being trimmed properly or as intended, based on JRL's specifications. JRL was asked to review the ficus trees. Ms. Crismond presented the report from JRL clarifying that the current trimming approach is consistent with the specifications, which they created and all parties approved. Mr. Albeit indicated he was not aware of what the three (3)-year cycle schedule was and asked Ms. Crismond to provide.

*****AUDIO ENDED AT APPROXIMATELY 9:23 A.M., THE FOLLOWING PORTION
WAS TRANSCRIBED FROM THE MEETING NOTES*****

FIFTEENTH ORDER OF BUSINESS

**Supervisors' Requests and Public
Comments (5 minutes per speaker)**

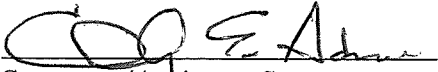
There being no Supervisors' requests or public comments, the next item followed.

SIXTEENTH ORDER OF BUSINESS

Adjournment

There being nothing further to discuss, the meeting adjourned.

Standing motion to adjourn at approximately 9:25.


Secretary/Assistant Secretary


Chair/Vice Chair